

IN THE CIRCUIT COURT OF  
THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION

NORMA R. BROIN, et al.,  
Plaintiffs,

vs.

CASE NO. 91-49738  
CA 22

PHILIP MORRIS COMPANIES,  
INC., et al.,  
Defendants.

\_\_\_\_\_  
TRIAL  
VOLUME 86

TRANSCRIPT OF PROCEEDINGS in the  
above-styled cause before the Honorable Robert Paul  
Kaye, at the Dade County Courthouse, 73 West Flagler  
Street, Miami, Florida, on Friday, August 15, 1997,  
at 1:40 p.m.

APPEARANCES:

STANLEY M. ROSENBLATT, ESQ.

SUSAN ROSENBLATT, ESQ.

On behalf of the Plaintiffs

HUGH R. WHITING, ESQ.

JONES DAY REAVIS & POGUE

On behalf of R.J. Reynolds

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THOMASINA MOORE, ESQ.

ANDERSON MOSS SHEROUSE & PETROS

On behalf of Brown & Williamson

DAVID L. ROSS, ESQ.

GREENBERG TRAUIG, et al.

On behalf of Lorillard

DAVID HARDY, ESQ.

SHOOK HARDY & BACON

On behalf of Lorillard and Philip Morris

KELLY ANNE LUTHER, ESQ.

CLARKE SILVERGLATE WILLIAMS & MONTGOMERY

On behalf of Liggett and Brooke Groups

MICHAEL RUSS, ESQ.

and RICHARD SCHNEIDER, ESQ.

KING & SPALDING

On behalf of Brown & Williamson and American  
Tobacco Company

JOSEPH R. MOODHE, ESQ.

DEBEVOISE & PLIMPTON

On behalf of The Council for Tobacco Research

JOSE MARTINEZ, ESQ.

MARTINEZ & GUTIERREZ

On behalf of Philip Morris

JEFFREY FURR, ESQ.

WOMBLE & CARLYLE

On behalf of R.J. Reynolds

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(The following proceedings were had in open court, outside of the presence of the jury:)

THE COURT: Okay. We had one more, one more left, before we get going. Okay. We've gone through that. Do you want to say something?

MS. ROSENBLATT: That's done. They have completed in terms of the Brown & Williamson document, and we have gone through Merryman and Dawson.

MR. RUSS: What I would like to do, Judge, before we get started, is yesterday the Court asked -- with respect to the Liggett documents, we have accumulated the material. Here is a copy for plaintiffs' counsel and a copy for the Court.

Just to tell you what we have, we have got a very short brief. Believe it or not, it is short. And we have got a chronology of the events that we think are relevant; that is, the history of the plaintiffs' position with respect to the documents, with the attached transcript references. And we also have copies of the authorities.

So this is a package that I think will prepare us to deal with the Liggett document issue when the Court is ready to entertain it.

MS. ROSENBLATT: What I would do is

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over the weekend I will review this response and hopefully have something to the Court by Monday, Monday or Tuesday.

THE COURT: While doing this, how much longer do you think you have got before you rest?

MS. ROSENBLATT: We were just discussing that. Without a lot of argument on exhibits -- there's a lot of exhibits -- you know, there would be no problem with having it all presented and completed by Wednesday.

11 Anticipating argument over exhibits, and  
12 there are many exhibits in this case, as well as the  
13 argument on Liggett, we are probably talking about  
14 going through the following Monday or Tuesday.

15 THE COURT: We have Thursday and Friday  
16 off.

17 MS. ROSENBLATT: Because Thursday and  
18 Friday are off. So because of that now, defense---

19 THE COURT: In other words, no live  
20 testimony.

21 MS. ROSENBLATT: We are not having any  
22 more live testimony. We have the one video, which  
23 is probably about an hour, an hour or so, in terms  
24 of---

25 THE COURT: A few depositions and  
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1 then---

2 MS. ROSENBLATT: Depositions and a lot  
3 of exhibits. Now, what we had discussed during the  
4 break, I discussed with defense counsel, who had  
5 agreed subject to Your Honor's determination, is  
6 perhaps spending all day Monday going through the  
7 balance of depositions and starting with some of the  
8 objections to exhibits, and they are going to tell  
9 me which exhibits they don't object to.

10 We gave them a preliminary list, the first  
11 phase, this morning, of exhibits we want to place in  
12 evidence, as opposed to having just a few  
13 depositions read and then going part of the day.  
14 So, to try to get a lot done, 9:00 to 5:00, all day  
15 Monday, because there still are a number of  
16 depositions we have got to go through.

17 THE COURT: What you are telling me is  
18 you don't need a jury on Monday.

19 MS. ROSENBLATT: That's what we felt.  
20 We could have one for an hour or two, but it  
21 wouldn't be a full day because there's things we  
22 need to take up with the Court.

23 THE COURT: Actually, how many more  
24 depositions do you have?

25 MS. ROSENBLATT: I had it written down,  
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1 if I could find my page. I think about 12, 12 to 13  
2 total that we are talking about.

3 So it would -- we have Arthur Stephens. We  
4 have a CEO of American Tobacco, Donald Johnston. We  
5 have the executive director of the American Thoracic  
6 Society, the videotape of Carl Booberg.

7 THE COURT: Why don't you just put a  
8 package of those together for me. I will take as  
9 many home over the weekend and go through them -- if  
10 that's what you want to do.

11 MS. ROSENBLATT: Well---

12 THE COURT: Not that I am---

13 MS. ROSENBLATT: We feel guilty. You  
14 are putting in long days. We can -- and I think  
15 that some of these things, you know, I am also  
16 trying to cut back a little, you know, basically do  
17 it---

18 THE COURT: In other words, I don't  
19 really want to waste the jury's time. Can we do it  
20 in one day, all 12?  
21 MS. ROSENBLATT: I think so. Because  
22 we are going to try to cut back some of what we have  
23 also, you know, designated, now that I anticipate---  
24 MR. ROSENBLATT: You developed a  
25 pattern of rulings pretty much, you know, so your  
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1 rulings come much quicker. The arguments are much  
2 shorter, in terms of the depos.  
3 MS. ROSENBLATT: As I go through now, I  
4 will know the types of questions that you are going  
5 to keep out, so I think I could probably cut a few  
6 back.  
7 We also have Celermajer. That was the  
8 Australian cardiologist. We have portions that are  
9 designated. I don't think we have gotten the  
10 objections. You know, we have a limited amount of  
11 his deposition. We wanted to -- we have a few  
12 scientists left. There were very limited portions.  
13 I think we could probably get through all of that on  
14 Monday.

15 THE COURT: Is she realistic?  
16 MR. HARDY: Well, I don't know, but we  
17 certainly agree with plaintiffs' counsel that it  
18 would be a good idea, if it's all right with Your  
19 Honor, to spend a full day doing what she's talking  
20 about and not have the jury come back until Tuesday  
21 morning. Because we think that would at least put  
22 us in a position where we could spend something  
23 approaching full days with the jury on Tuesday and  
24 Wednesday.

25 THE COURT: This in and out is a real  
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1 problem for them.  
2 MR. HARDY: As far as that goes, that's  
3 fine.  
4 We do believe, as other counsel indicated  
5 this morning, that some of these depositions are  
6 cumulative, and we have points to make about that.  
7 But that's for the argument on Monday, without the  
8 jury.

9 THE COURT: All right. Then, just to  
10 get a feel of what's going on, if they rest, you'll  
11 say next week---

12 MR. HARDY: Yes. Mrs. Rosenblatt---

13 THE COURT: Labor Day I guess is what  
14 we are talking about, day after Labor Day.

15 MR. HARDY: She had told me that I  
16 should plan on them resting sometime in the early  
17 part of the week of the 25th. That's the week  
18 that -- that's a four-day week. We have no court on  
19 Friday.

20 The defendants will have---

21 THE COURT: I think it's Thursday and  
22 Friday.

23 MS. LUTHER: No. We're talking about  
24 the week after, Judge. Labor Day weekend.

1 Thursday and Friday.

2 THE COURT: That's what I am saying,  
3 next week is no Thursday and Friday. That will take  
4 us into---

5 MS. ROSENBLATT: We are going into the  
6 following week. Probably on Monday.

7 MR. HARDY: Monday, the 25th.

8 MS. ROSENBLATT: Monday is August 25.

9 MR. HARDY: That week is a four-day  
10 week.

11 THE COURT: That's right. Because of  
12 the Labor Day holiday. That's right. I need to see  
13 what we are talking about here, the 25th, Monday,  
14 that we are talking about.

15 MR. HARDY: Defendants will have some  
16 absolutely riveting motions for directed verdict.  
17 If there is any of the case left then, we will need  
18 to come back.

19 THE COURT: We will probably be doing,  
20 as I understand it, then -- today is the 15th. They  
21 don't come back until the 19th. Take Monday -- the  
22 18th, the 19th, and 20th. We present those  
23 depositions, whatever it is, to them.

24 You are about to rest on that date, but are  
25 not really sure.

1 MS. ROSENBLATT: I don't think we can  
2 rest then because there's too many exhibits.

3 THE COURT: Two days off.

4 MS. ROSENBLATT: We have to publish  
5 exhibits.

6 THE COURT: Okay.

7 MS. ROSENBLATT: 25th or 26th.

8 THE COURT: Come back on the 25th.

9 MS. ROSENBLATT: That day or the 26th  
10 we are probably realistically going to rest with all  
11 the loose ends.

12 THE COURT: We only have two days left  
13 of that week.

14 MR. HARDY: Defendants will have a  
15 motion that.

16 THE COURT: A day or two for the  
17 motions. That week is taken care of. You wouldn't  
18 be able to really start until September 2nd.

19 MR. HARDY: We would start at the  
20 latest, right.

21 THE COURT: That's what I thought.

22 MR. HARDY: Tuesday the 2nd.

23 THE COURT: You figure you have got  
24 two, three, four, five?

25 MR. HARDY: We have a maximum of three

1 weeks, meaning -- let me put it this way. I think  
2 we have between 10 and 15 court days, the best we  
3 can figure.

4 THE COURT: Okay. Then a couple days  
5 for more arguments and jury conferences. We'll run  
6 smack up to October. Close.  
7 Okay. So if we are ready -- I guess you're  
8 ready.  
9 Are you getting paid per---  
10 MR. SCHNEIDER: Per case.  
11 MR. ROSENBLATT: The first thing I am  
12 going to do is read, publish the---  
13 MR. SCHNEIDER: '78, '79.  
14 MR. ROSENBLATT: '78 or '79.  
15 MR. SCHNEIDER: Okay. The way to  
16 identify it is the Brown & Williamson employee  
17 handbook.  
18 THE BAILIFF: Bringing in the jury.  
19 (The jury entered the courtroom and the  
20 following proceedings were had:)  
21 THE COURT: All right. I think we are  
22 about ready. Do you have another presentation?  
23 This time it's going to be what?  
24 MR. ROSENBLATT: An exhibit, a Brown &  
25 Williamson employee handbook, Exhibit 155, which is  
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1 in evidence.  
2 THE COURT: You want to publish  
3 portions thereof?  
4 MR. ROSENBLATT: Yes.  
5 THE COURT: Both sides will read or  
6 have read certain portions of that document to the  
7 jury.  
8 MR. ROSENBLATT: This document was  
9 disseminated either in 1978 or 1979, and I have  
10 designated certain portions that I want to read to  
11 the jury and counsel, Mr. Russ, for Brown &  
12 Williamson, has designated other portions that he  
13 wants to read to the jury. And I will let you know  
14 which is which as we begin.  
15 The first segment is called Public Smoking  
16 and this, what I am going to read to you now, is my  
17 designation: In 1971, Jesse L. Steinfeld, M.D.,  
18 then U.S. Surgeon General, advocated the prohibition  
19 of smoking in confined public places, such as  
20 restaurants, theaters, airplanes, trains and buses,  
21 because the nonsmoker might be injured by ambient  
22 tobacco smoke; that is, tobacco smoke in the  
23 atmosphere.  
24 Mr. Russ is designating this paragraph:  
25 Steinfeld's statement gave antismoking groups an  
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1 effective theme. The antismoking organizations  
2 adopted the objective that smoking should be made  
3 socially unacceptable. They began a mass invasion  
4 of state capitals and city halls to argue that laws  
5 must be enacted to protect the nonsmoker from  
6 ambient tobacco smoke forced on him by smokers in  
7 public places.  
8 Then there is a section called Chronology  
9 and it gives various dates. Okay. This is my  
10 designation: 1973. Thirty-six bills proposed in 18

11 states; five enacted. Many municipalities enacted  
12 restrictive ordinances. The Civil Aeronautics Board  
13 ordered commercial airlines to separate smokers and  
14 nonsmokers.

15 Then we go to 1974: Sixty-two bills  
16 proposed in 29 states; five enacted. Several  
17 municipal ordinances restricting smoking also were  
18 enacted. The Interstate Commerce Commission  
19 restricted smokers to the rear 20 percent of seating  
20 space on interstate buses.

21 Then we go to the year 1975: One hundred  
22 sixty restrictive smoking bills introduced in 48  
23 states; 17 enacted. The Minnesota Clean Indoor Air  
24 Act restricted smoking in a broad range of public  
25 and commercial areas. The New York Health

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1 Department prohibited smoking in public areas,  
2 including supermarkets.

3 Going to 1976: One hundred sixty-one bills  
4 proposed in 39 states; eight were enacted, including  
5 the Utah Clean Indoor Air Act, another broad no  
6 smoking bill.

7 Then we go to the year 1977: One hundred  
8 thirty-six restrictive bills introduced in 44  
9 states; 13 were enacted. The General Services  
10 Administration (the caretaker for U.S. Government  
11 buildings), the State Department and the Department  
12 of Defense, enacted restrictive smoking guidelines  
13 for buildings under their control.

14 What I'm going to read now is designated by  
15 Mr. Russ. It's still in the year 1977.

16 The FAA rejected a petition by a Nader group  
17 which requested a prohibition against smoking by  
18 pilots on the flight deck of airliners. The CAB  
19 voted to prohibit pipe and cigar smoking in  
20 interstate airlines and announced that it would  
21 consider a rule prohibiting cigarette smoking.

22 Antismoking groups have continued to enjoy  
23 their greatest successes at the local government  
24 level.

25 And my designation: Most major cities now  
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1 have restrictive smoking ordinances.

2 Then there is a section which is called The  
3 Laws and Enforcement. And this is Mr. Russ's  
4 designation: Yet the primary impact of smoking  
5 restriction laws may be the creation of a no-smoking  
6 norm in public places.

7 MR. RUSS: This is you.

8 MR. ROSENBLATT: This is my  
9 designation: The Commissioner of Dade County,  
10 Florida, admitted that that county's antismoking  
11 ordinance was virtually unenforceable but added:

12 But it's being morally enforced; it's the  
13 people, the people in the elevators, the clerks in  
14 the stores and the nonsmokers in the check-out  
15 lines, who by their remarks to offenders are  
16 enforcing the law. It's being enforced by people  
17 who want to obey the law and I'd say it was 85

18 percent to 90 percent effective.

19 Mr. Russ's designation: The impact of  
20 no-smoking laws on the cigarette market has not been  
21 accurately measured.

22 And then what follows is my designation, but  
23 obviously it's all coming the same document.

24 However, to gauge the impact, it is helpful  
25 to remember that the average smoker in the United

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1 States consumes one and a half packs per day. If it  
2 is assumed that smoking prohibitions in public  
3 places caused the average smoker to consume one  
4 cigarette per day, total consumption in the U.S.  
5 would be reduced by 1/30th.

6 Then there is a section called The Medical  
7 Facts. In 1971, Jesse L. Steinfeld, M.D., who  
8 served as U.S. Surgeon General from 1968 to 1973,  
9 said:

10 Evidence is accumulating that the nonsmoker  
11 may have untoward effects from the pollution his  
12 smoking neighbor forces upon him. It is high time  
13 to ban smoking from all confined public places such  
14 as restaurants, theaters, airplanes, trains, and  
15 buses.

16 This is a designation by Mr. Russ: There  
17 was no evidence in the speech, and there had been no  
18 evidence in Previous Public Health Service reports  
19 to Congress on smoking and health signed by the  
20 Surgeon General (commonly called the Surgeon  
21 General's report). In fact, a previously published  
22 PHS booklet entitled "Smoking, Health, and You"  
23 stated that the smoke from other people's cigarettes  
24 "may make your eyes tear or may make you cough, but  
25 it cannot harm you."

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1 Antismoking groups have repeated  
2 Dr. Steinfeld's claims in forums throughout the  
3 United States and have expanded them to include  
4 assertions about a variety of potential injuries to  
5 nonsmokers from exposure to ambient tobacco smoke.

6 And this is my designation: The  
7 antismokers' claims that nonsmokers can be injured  
8 by ambient tobacco smoke are not supported by  
9 scientific evidence.

10 And this is Mr. Russ's designation: In  
11 1977, the FAA considered a petition by antismoking  
12 groups requesting --

13 MR. RUSS: A rule.

14 MR. ROSENBLATT: I couldn't read it on  
15 my copy.

16 -- requesting a rule prohibiting tobacco  
17 smoking on the flight deck. This -- their  
18 contention was that exposure to relatively low  
19 levels of carbon monoxide causes substantial  
20 impairments to vital brain and nervous system  
21 functions. The FAA carefully considered several  
22 studies and ruled that the petition did not disclose  
23 adequate reasons to justify the rule it requested.

24 Continuing with Mr. Russ's designations: It



25 is interesting to note a few carbon monoxide  
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1 equivalents. One automobile driven 12-1/2 miles  
2 emits more carbon monoxide than a 1.4-pack-per-day  
3 smoker contributes to the atmosphere in an entire  
4 year. A Washington, D.C. Counsel of Governments  
5 study found that cars and trucks account for 92  
6 percent of the carbon monoxide released into that  
7 region's air. The FAA measurements of carbon  
8 monoxide emissions from one Boeing 707 in its 33  
9 minute landing-takeoff cycle is 202 pounds, the same  
10 amount as emitted from smoking 1.3 million  
11 cigarettes.

12 And then there is a section called The  
13 Non-Problem problem, and this is Mr. Russ's  
14 designation: A study of cigarette smoking in  
15 aircraft conducted jointly by HEW, the FAA and the  
16 Department of Transportation concluded that the  
17 inhalation of ambient tobacco smoke aboard  
18 commercial aircraft "does not represent a  
19 significant health hazard to nonsmoking passengers."  
20 The result of the study was first announced in 1970,  
21 prior to the time of Surgeon General Steinfeld's  
22 statement that evidence showed ambient tobacco smoke  
23 could be harmful to nonsmokers.

24 And continuing with Mr. Russ's designation:  
25 Doctor E. Cuyler Hammond, vice-president,  
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1 Epidemiology and Statistical Research, of the  
2 American Cancer Society, and author of famous  
3 studies linking smoking and lung cancer, was  
4 reported to have made statements to the  
5 International Conference on Public Education About  
6 Cancer in 1974 as follows:

7 Dr. Hammond stated that there was "no shred  
8 of evidence that a nonsmoker can get cancer from  
9 'secondhand' smoke and there is a lot of evidence  
10 that he cannot...." He added that to suggest passive  
11 smoking (inhalation of smoke by nonsmokers) could  
12 cause cancer is dishonest, and that he would be  
13 prepared to testify as much in court.

14 And this is my designation: It is apparent  
15 that antismokers' claims that nonsmokers are subject  
16 to injury by ambient tobacco smoke are not supported  
17 by scientific evidence.

18 Now we come to a section of the employee  
19 handbook which is called Checklist of Arguments.  
20 And it goes down a whole series of questions and  
21 answers, and it begins as follows, with my  
22 designation.

23 The following suggestions are intended to be  
24 guides for writing or speaking in response to  
25 antismoking arguments on public smoking actions. It

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1 is important to remember that health or scientific  
2 arguments can be ineffective in communicating with  
3 the general public. On the other hand, most people

4 can clearly identify with arguments based on freedom  
5 of choice, and many people feel strongly that the  
6 "hand of government" should not interfere with their  
7 private lives.

8 "The public smoking issue" can be resolved  
9 on the basis of common courtesy. Most smokers will  
10 show respect for the wishes of those around them.

11 Public smoking laws present grave  
12 enforcement problems. During the prohibition era  
13 this country learned of the great difficulty  
14 government has in enforcing matters of social  
15 morality and conduct. Unless the police go on  
16 rounds to arrest an individual as soon as the person  
17 lights up in a no-smoking area, it will be  
18 practically impossible to enforce public smoking  
19 laws effectively.

20 Still under the same section of the  
21 checklist of questions and answers, this is a  
22 designation by Mr. Russ.

23 Question: How far will government go to  
24 restrict our private lives?

25 There are obviously many public annoyances  
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1 to everyone in their daily lives. The "bad" or  
2 conflicting behavior and manners of other people in  
3 public places can cause substantial irritation. The  
4 noise and fumes of heavy traffic, the  
5 dissatisfaction toward public services like  
6 sanitation and law enforcement, the irritation from  
7 dirty streets, barking dogs, noisy neighbors, or  
8 even the weather can certainly be more severe than  
9 the diffused smell of tobacco smoke in a ventilated  
10 public place.

11 Should laws -- should laws also be passed to  
12 ensure good manners and behavior, and, if so, by  
13 whose standards? Any effort to extend government  
14 regulation into these areas would result in a  
15 massive interference with an individual's personal  
16 life and freedoms.

17 Here we get to a section in the employee  
18 handbook which is called Questions & Answers.

19 Individuals associated with the tobacco  
20 industry often are confronted by thought-provoking  
21 questions regarding smoking and health, public  
22 smoking and other issues which make up the  
23 controversy surrounding the industry. In the past,  
24 employees have not been adequately equipped to deal  
25 with these questions. Brown & Williamson prepared

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1 this handbook in an effort to inform employees with  
2 a depth of knowledge surrounding the issues.

3 The following section includes a series of  
4 questions and answers covering a variety of issues.  
5 These questions have been accumulated from media  
6 interviews and discussions with a variety of groups  
7 by Brown & Williamson and industry spokespersons.  
8 The following questions and answers are not intended  
9 to make "spokespersons" out of Brown & Williamson  
10 employees, but they are intended to better inform

11 our managers.

12 And then we have a series of Q and A,  
13 questions and suggested answers.

14 Question: Does smoking cause lung cancer,  
15 emphysema, cardiovascular disease and bronchitis.

16 Answer: No one knows. Scientific research  
17 has not established that smoking causes illness. We  
18 all know some scientists have said smoking causes  
19 illness, but many respected scientists believe cause  
20 has not been shown. More research is needed.

21 Question: How can you deny the overwhelming  
22 statistical evidence that smoking causes disease?

23 Answer: The case against smoking is based  
24 almost entirely on inferences from statistics. But  
25 most scientists will agree that statistical

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1 associations cannot establish cause and effect.  
2 Statistical associations are only clues which show  
3 the need for clinical and laboratory experiments.  
4 There are other flaws in the statistical argument,  
5 such as the reliability of the data. By the way,  
6 there is a statistical association between lung  
7 cancer and the use of electric razors. We need more  
8 biological research.

9 Question: Do you deny that smoking is  
10 hazardous to your health?

11 Answer: No one knows. Many respected  
12 scientists believe that a causal relationship  
13 between cigarette smoking and illness has not been  
14 proven.

15 Question: How can you smoke when you know  
16 you are causing health problems to nonsmokers in the  
17 same room?

18 Answer: Smoke in the ambient air is not  
19 harmful to the health of the nonsmoker. Even  
20 medical experts who have been associated with the  
21 charge that smoking causes lung cancer in the smoker  
22 have said that smoke in the ambient air has no  
23 influence on the health of the nonsmoker.

24 Question: Why are manufactures producing  
25 more low tar and nicotine cigarettes and advertising

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1 those brands heavily if there is no health risk  
2 involved in smoking high tar and nicotine  
3 cigarettes?

4 Answer: Cigarette manufacturers are  
5 producing low tar and nicotine cigarettes in  
6 response to consumer demands for those products.  
7 Your perception of the growth of the low tar segment  
8 is correct. Sales of cigarettes with less than 15  
9 milligrams tar content increased by more than 50  
10 percent in 1976 and comprised roughly 25 percent of  
11 the total cigarette market in 1977. Only a few  
12 years ago low tar and nicotine cigarettes were an  
13 insignificant part of the market. This very rapid  
14 shift shows the cigarette manufacturers eagerness to  
15 respond to customers' changing preferences. The  
16 advertising emphasis simply follows the shift in  
17 consumer demand. No cigarette manufacturer has said

18 there is no health risk involved in smoking high tar  
19 and nicotine brands. As with the question of  
20 smoking and disease in general, no one knows.

21 Question: Does the cigarette industry feel  
22 some responsibility for the \$8 billion cost to the  
23 United States for health care and \$18 billion cost  
24 to the United States in loss of production time  
25 caused by cigarettes sold?

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1 Answer: The charge is based on the  
2 assumption that smoking causes illness, but  
3 causation has not been established by scientific  
4 research. There are other difficulties with the  
5 figures. For example, the figures assume the need  
6 for health services included would disappear if no  
7 one smoked cigarettes. With our aging population,  
8 this is unlikely.

9 Question: Does the nonsmoking majority in  
10 this country have the right to vote that cigarettes  
11 should not be smoked in public places?

12 Answer: No. Such a law would be completely  
13 unjustified as a function of government in our  
14 society. Tolerance is the cornerstone of this  
15 country's democracy. There is no health danger to  
16 nonsmokers -- the problem is annoyance.

17 This is a social matter which must be left  
18 to people to resolve in social situations through  
19 mutual courtesy. Laws dictating personal social  
20 conduct, arrests, fines, and forced segregation are  
21 inappropriate means of dealing with a social  
22 situation. If there are going to be laws  
23 prohibiting smoking in public places, there should  
24 certainly be laws prohibiting strong perfume, body  
25 odor, and untrained pets.

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1 Question: What would you tell your child if  
2 he asked you whether he should smoke cigarettes?

3 Answer: I would tell him to wait until he  
4 was an adult and then make up his own mind. Whether  
5 to smoke is a choice for the individual and a choice  
6 that should be made only by informed adults.

7 Question: How do you account for the fact  
8 that so many government and scientific societies  
9 have passed resolutions asserting that smoking  
10 causes lung cancer and other human diseases?

11 Answer: The fact that government bodies and  
12 scientific societies have passed such resolutions  
13 indicates that the continuing controversy over  
14 smoking and health is political, not scientific.  
15 Scientific issues in the medical field are settled  
16 by definitive biological experimentation, not by the  
17 passage of a resolution.

18 There have been no experiments proving that  
19 cigarette smoking causes illness, and that is why  
20 activists in government agencies and scientific  
21 organizations have resorted to resolutions to  
22 establish their personal opinions.

23 Question: Don't all of the medical experts  
24 in the United States agree that smoking causes lung

25 cancer?

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1 Answer: As a matter of fact, many  
2 scientists in the United States hold the view that  
3 smoking has not been scientifically established as a  
4 cause of lung cancer. They note that no one knows  
5 the cause or causes of lung cancer. Nor does anyone  
6 know the mechanism or mechanisms whereby this  
7 disease develops.

8 Question: Won't you concede that smoking is  
9 a prime suspect as a cause of lung cancer?

10 Answer: Scientists generally agree that  
11 lung cancer is a multifactorial disease. It has  
12 been statistically associated with many factors.  
13 These include occupation, geographical location,  
14 sex, urbanization, and several others as well as  
15 smoking. But factor does not mean cause. Whether  
16 any of these suspects plays a role in the causation  
17 of this disease is as yet unknown.

18 Question: Aren't there cancer-causing  
19 agents in tobacco smoke? Don't they explain the  
20 association between smoking and lung cancer?

21 Answer: For more than 20 years now, cancer  
22 researchers have been trying to identify components  
23 in tobacco smoke that are harmful to human health.  
24 To date, however, they have not identified any  
25 ingredient or group of ingredients, as found in

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1 tobacco smoke, that are disease-producing in humans.

2 Question: Hasn't lung cancer in women begun  
3 to increase as they have begun to smoke more?

4 Answer: There has long been a wide gap  
5 between the incidence of lung cancer in males and  
6 females and this gap has not been satisfactorily  
7 explained in terms of smoking. As to the recent  
8 reports of increased cancer in women, some  
9 scientists believe that this disease has been  
10 increasing in women for many years, which is not  
11 consistent with a smoking-causation hypothesis.

12 There are other considerations. For  
13 example, the lung cancer increase reported in women  
14 is usually of a different type from those reported  
15 as predominant in men and, in fact, is a type not  
16 generally considered associated with smoking.

17 Question: What about heart disease? Isn't  
18 it pretty well established that smoking causes this  
19 disease?

20 Answer: Heart disease is a multifactorial  
21 disease; that is, one which has been statistically  
22 associated with many factors. So far, more than 20  
23 factors have been identified. Factor does not mean  
24 cause. No one knows whether any of the observed  
25 factors plays a role in the causation of the

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1 disease.

2 Recent studies of identical twins suggest  
3 that a person's genetic background may be the more

4 important -- the most important factor. Other  
5 studies indicate that a person's personality type is  
6 the prime factor.

7 Question: Aren't cigarettes addictive?

8 Answer: It is difficult to discuss  
9 addiction today, because people apply the term to  
10 many different circumstances. Some people say they  
11 are addicted to chocolate; others say their children  
12 are addicted to TV. The 1964 Surgeon General's  
13 Report concluded that cigarettes should be  
14 classified as habituating, like coffee, and not  
15 addictive, like morphine.

16 Many people have given up smoking. Why do  
17 some people continue to smoke who say they want to  
18 quit? Why do people continue to overeat when they  
19 say they are too fat?

20 Question: What is the tobacco industry  
21 doing to help resolve the smoking and health  
22 controversy?

23 Answer: In the last 24 years, the tobacco  
24 industry has provided more than \$70 million for  
25 independent research regarding questions related to

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1 smoking and health. In many of these years this  
2 commitment has exceeded that of any government  
3 department, and has been substantially more than the  
4 research expenditure reported by all the voluntary  
5 health associations, who spend a major portion of  
6 their donated funds for administration and for  
7 public relations campaigns. The tobacco industry is  
8 committed to advancing scientific inquiry in this  
9 area.

10 Question: Do the tobacco companies control  
11 the research they sponsor?

12 Answer: Absolutely not. The commitment of  
13 the tobacco manufacturers to resolve the smoking and  
14 health controversy has never been fully appreciated.  
15 Grants are made with no strings attached except a  
16 pledge to apply the money to legitimate scientific  
17 research. Each researcher is free to publish his  
18 study results, whatever they may be.

19 Question: Does it bother your conscience to  
20 sell cigarettes?

21 Answer: Absolutely not. The tobacco  
22 industry is a \$15 billion industry affecting 17  
23 million people. As far as the health question is  
24 concerned, no valid research has ever established  
25 that cigarette smoking causes illness.

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1 Nevertheless, every pack of cigarettes carries a  
2 warning label as required by law.

3 A person would have to be a cave dweller not  
4 to be aware of the warning. We live and work in a  
5 country which supports the free enterprise system.  
6 It gives its citizens the freedom of choice. We  
7 should continue to enjoy that freedom, both in our  
8 business and in our personal lives.

9 Then there is a general section called  
10 Smoking And Health, and then a subsection which is

11 called Smoking And Pregnancy. Okay.  
12 Smoking And Pregnancy. Claims have been  
13 made that smoking during pregnancy causes adverse  
14 effects, in particular that smokers are more likely  
15 to have low birth weight infants. Some claims have  
16 been made that smoking increases the risk of  
17 congenital malformation and perinatal mortality.  
18 However, these claims are based on statistical data  
19 which are at best equivocal and, furthermore, cannot  
20 prove causal relationships. Moreover, there are  
21 data which are inconsistent with certain of these  
22 claims.

23 Low birth weight infants. A biostatistician  
24 who examined and was unable to accept the causal  
25 hypothesis contended that the data he studied may

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1 suggest the existence of some other common factor  
2 which causes women both to smoke and to have a  
3 higher proportion of low birth weight infants.

4 Yerushalmy advanced this theory in a 1972  
5 report describing data which he later said almost  
6 clinched the argument against causation. This  
7 conclusion follows from the finding that women who  
8 eventually become smokers produced a large  
9 proportion of low birth weight infants even before  
10 they started to smoke.

11 To explain these findings, Yerushalmy  
12 speculated that the higher incidence of low birth  
13 weight infants among smoking women may be due to the  
14 smoker, rather than the smoking.

15 Despite much repetition of the claim that  
16 certain substances in tobacco smoke are harmful to  
17 the smoker, it has not been scientifically proven  
18 that any component or combination of components as  
19 found in tobacco smoke causes disease.

20 These claims, which focus primarily on tar,  
21 nicotine, and carbon monoxide, have led to proposals  
22 for establishing maximum levels of such substances  
23 in tobacco smoke. Such a recommendation currently  
24 is being considered by the Department of Health,  
25 Education and Welfare as part of a major antismoking

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1 initiative launched by Secretary Joseph Califano.

2 Then there is a section called Research.  
3 And I am getting to the end.

4 The scientific commitment of the tobacco  
5 industry is clear. For nearly 25 years the  
6 cigarette manufacturers have been supporting totally  
7 independent research with completely non-restrictive  
8 funding. The results, whatever they are, may be  
9 published wherever the researcher chooses.

10 Hundreds of researchers in medical schools,  
11 hospitals, and other scientific institutions in this  
12 country and abroad have received more than \$70  
13 million from the tobacco industry to support their  
14 investigations. The findings of scientific studies  
15 funded, in whole or in part by the cigarette  
16 companies, comprise more than 2,000 papers published  
17 in the world's professional literature.

18           The Council for Tobacco Research-USA, Inc.,  
19   an industry-sponsored agency, has the major  
20   responsibility for the evaluation and funding of  
21   research proposals. Research support has been  
22   implemented mainly through a program of  
23   grants-in-aid, supplemented by contracts for  
24   research with institutions and laboratories. The  
25   Counsel does not operate a research facility.

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1           The position of the tobacco industry is that  
2   the questions raised by the smoking and health  
3   controversy can be resolved only by sound scientific  
4   research.

5           That's it from this exhibit, Your Honor.

6           THE COURT: Okay.

7           MS. ROSENBLATT: We have the two  
8   depositions to---

9           THE COURT: All right.

10          MS. ROSENBLATT: Dawson. I forgot my  
11   glasses.

12          Page 4.

13          THE COURT: Which one are you reading?

14          MS. ROSENBLATT: Brennan Dawson.

15          MR. ROSENBLATT: This is the deposition  
16   of a lady named Brennan Dawson, which was taken in  
17   Washington, D.C., November 18, 1993.

18          MS. ROSENBLATT: She's with the Tobacco  
19   Institute.

20          (Portions of the deposition of BRENNAN  
21   DAWSON were read to the jury as follows:)

22          Q. Tell me your name, please, and your address.

23          A. My name is Brennan Dawson. I live at  
24   [DELETED]

25          Q. How far is [DELETED] from [DELETED]?

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1          A. It's just over the line.

2          Q. How far is it?

3          A. Probably eight or nine miles.

4          Q. Who are you employed by?

5          A. The Tobacco Institute.

6          Q. What is the Tobacco Institute?

7          A. The Tobacco Institute is a trade association  
8   representing the United States cigarette  
9   manufacturers.

10          Q. What does it do?

11          A. Like any other trade association in  
12   Washington, we, I guess in a word, communicate on  
13   behalf of our member companies. That would include  
14   with elected officials at the federal and state  
15   level, as well as with the public and the media.

16          Q. Who are the member companies of the Tobacco  
17   Institute?

18          A. The member companies are Philip Morris, R.J.  
19   Reynolds, Lorillard, American Tobacco, and Liggett  
20   Myers.

21          Q. That's it?

22          A. That is it.

23          Q. Who is the president of the Tobacco  
24   Institute?



25 A. Samuel Chilcote.  
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1 Q. Where is the main office of the Tobacco  
2 Institute?  
3 A. We are located at 1875 "I" Street,  
4 Northwest, Washington.  
5 Q. Is that where you are based?  
6 A. Yes, it is.  
7 Q. How many people are based there from the  
8 Tobacco Institute?  
9 A. Approximately 30.  
10 Q. Does the Tobacco Institute have any offices  
11 other than this office you have mentioned in D.C.?  
12 A. Yes, we do.  
13 Q. And where are they?  
14 A. We have regional offices, which after the  
15 reorganization, I'm not sure of the locations.  
16 Q. What is the reorganization you are referring  
17 to?  
18 A. Several weeks ago we went through a  
19 downsizing and a reorganization.  
20 Q. Okay. Before the downsizing, tell me where  
21 the regional offices were located.  
22 A. We had offices in Albany, New York; in  
23 Sacramento, California; in Minneapolis; in Austin,  
24 Texas, and in---  
25 Q. Take your time.

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1 A. Trying to remember whether it was Nashville  
2 or Knoxville, something like that.  
3 Q. That's it?  
4 A. That I can recall.  
5 Q. Did some of those offices---  
6 MS. ROSENBLATT: It's Page 8 now,  
7 Stanley. Line 11.  
8 Q. What is your present position with the  
9 Tobacco Institute?  
10 A. I'm vice-president for public affairs.  
11 Q. On a day-to-day basis, what does that  
12 involve?  
13 A. Most of what it involves is again  
14 representing the industry with the media and just  
15 public information inquiries we might get, those  
16 sorts of things.  
17 Q. Do the members of the tobacco industry refer  
18 all media inquiries to the Tobacco Institute?  
19 A. No, they don't.  
20 Q. How does that work? How does it decide  
21 which ones they will handle themselves?  
22 A. It would be on a case-by-case basis. But if  
23 one of our member companies got a call on an  
24 industry-wide issue, that they thought we could  
25 better handle, they would refer it to us. But there

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1 is no set mechanism for that.  
2 Q. For example, when the EPA report came out on  
3 the issue of passive smoke, which was obviously very

4 negative toward the tobacco industry, in that  
5 specific instance, did the member companies respond  
6 themselves if the media called or did they direct  
7 everything to the Tobacco Institute?

8 A. I think it was some of each. Some of the  
9 companies had statements and responses and some  
10 questions they would have referred to us.

11 Q. Let's talk specifically about the EPA  
12 report. Who was the person from The Tobacco  
13 Institute that fielded those inquiries from the  
14 media?

15 A. It would have been anyone in media  
16 relations, which is my staff. There wasn't one  
17 person to do it.

18 Q. Did you do some of that personally?

19 A. Yes, I did.

20 Q. And who were the other members of your  
21 staff?

22 A. Walker Merryman and Tom Lauria.

23 Q. Did they have titles?

24 A. Yes, they do.

25 Q. What is Merryman's title?

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1 A. He is vice-president also.

2 Q. But is he under you or equal to you in terms  
3 of the chain of command?

4 A. He reports to me.

5 Q. What about Lauria?

6 A. He is assistant to the president.

7 Q. Does he report to you?

8 A. Yes, he does.

9 MS. ROSENBLATT: Page 11, Line 14.

10 Q. So who were the other vice-presidents that  
11 were more or less co-equal with you?

12 A. I'm not sure if they are co-equal. There is  
13 a gentleman by name of William Adams, who was senior  
14 vice-president for administration; a gentleman by  
15 the name of Curt Mulgreen, who heads up the state  
16 activities division. And we have the federal  
17 regulations division.

18 But, again, because of the reorganization, I  
19 don't know who is in charge of that.

20 Q. How long have you personally been with the  
21 Tobacco Institute?

22 A. About seven and a half years.

23 MS. ROSENBLATT: Line 9.

24 Q. What formal schooling did you have after  
25 that, after high school?

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1 A. I attended the University of Maryland for  
2 two years, then left and went to work. Attended  
3 college in the evenings at Marymount.

4 Q. Did you get a degree?

5 A. No. I'm still a handful of credits short of  
6 that.

7 MS. ROSENBLATT: Now we go to Page 15,  
8 Line 4.

9 Q. So you began with the Tobacco Institute in  
10 what year?

11 A. This would have been 1986.  
12 Q. Has your job changed from the time you went  
13 up until the present time, or has it always been  
14 pretty much the same?  
15 A. It has changed in terms of supervisory  
16 responsibilities.  
17 Q. Your supervisory responsibilities have  
18 increased?  
19 A. I did not have supervisory responsibilities  
20 when I first joined.  
21 Q. What was your job when you first joined?  
22 A. I was assistant to the president.  
23 Q. Who was president then?  
24 A. Sam Chilcote.  
25 Q. Is your present job a promotion from  
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1 assistant to the president?  
2 A. Yes.  
3 Q. What does the assistant to the president do?  
4 A. A spokesperson.  
5 Q. For the Tobacco Institute?  
6 A. Yes.  
7 Q. Have you personally appeared on many of the  
8 national television shows, or any of them?  
9 A. I have appeared on national television, yes.  
10 Q. Which programs?  
11 A. I have appeared on the NBC Evening News, on  
12 the CBS Evening News, the Today Show, Good Morning  
13 America. Those kinds of programs.  
14 Q. Have you ever been interviewed by anyone  
15 from the New York Times?  
16 A. Yes, I have.  
17 Q. In what context?  
18 A. I don't recall the specific context.  
19 Q. A lot of times?  
20 A. Yes. They covered tobacco issues.  
21 MS. ROSENBLATT: Now, Page 23, Line 19.  
22 Q. What is the Tobacco Institute line when you  
23 are asked does cigarette smoking cause cancer?  
24 A. If I'm asked if cigarette smoking causes  
25 cancer, I would say that I don't know the answer to  
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1 that question.  
2 Q. Well, not knowing the answer to that  
3 question, how can you do what you do, which is  
4 represent an industry that makes a product which may  
5 cause cancer?  
6 A. I would provide the industry's point of view  
7 on that. And the industry's point of view is that  
8 we don't know if smoking causes cancer.  
9 MS. ROSENBLATT: 29, Line 12.  
10 Q. Is it your understanding a percentage of  
11 those people who quit smoking cold turkey do it  
12 successfully and that within six months or a year  
13 they are not back to smoking?  
14 A. There are various numbers on that. I don't  
15 recall anything specific.  
16 Q. Give me a general recollection. Do you  
17 think a third become smokers again? 50 percent? 2

18 percent?  
19 A. I'm not comfortable giving you an answer  
20 since I don't recall.  
21 Q. Obviously you would concede that if there is  
22 a recidivism rate of 80 or 90 percent, then the  
23 original statistic is meaningless.  
24 A. I'm not sure that recidivism rate would be  
25 substantially different from that of diet or  
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1 exercise.  
2 Q. So you can see that the statistics that you  
3 say come from the Surgeon General's office of the  
4 people quitting smoking, for all you know, the great  
5 majority of them go back to smoking?  
6 A. No. I don't know.  
7 Q. You don't know one way or the other?  
8 A. No. It would be something I would have to  
9 look into.  
10 Q. Has anyone from the media ever asked you if  
11 smoking is addictive? Have you ever had to answer  
12 that question to the media?  
13 A. Yes, I have.  
14 Q. What is your answer?  
15 A. That smoking is not addictive.  
16 Q. What do you base that on?  
17 A. Again, the fact that there is nothing  
18 intoxicating about smoking that would cloud your  
19 judgment or impairment, your ability to make a good  
20 decision about quitting.  
21 Most people who quit do so without  
22 professional assistance, as opposed to when people  
23 are addicted to other things and have to be  
24 hospitalized in many cases. It's more of a common  
25 sense approach to the issue.  
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1 MS. ROSENBLATT: Page 33, Line 16.  
2 Q. What is the history of the Tobacco  
3 Institute? Are you familiar with it, when it was  
4 first formed, why it was formed, that kind of thing?  
5 A. The general outlines, yes. It was formed in  
6 1958. As I understand it, the industry was looking  
7 to put together a trade group that could act on  
8 behalf of the entire industry. That has pretty much  
9 been the function ever since.  
10 Q. Did it always have the same name?  
11 A. I think so.  
12 Q. Does The Tobacco Institute itself, employees  
13 of the Tobacco Institute, testify before committees  
14 of the U.S. Congress?  
15 A. Yes. Employees have.  
16 Q. In what context, usually?  
17 A. Generally, if there is a tobacco-related  
18 bill, the Tobacco Institute may be invited to  
19 present the industry's views.  
20 Q. Why do you think the Tobacco Institute is  
21 doing so poorly in the last few years in the sense  
22 that there are so many bans? For example, on  
23 buildings.  
24 A. I think public opinion is very much against

25 smoking.

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1 MS. ROSENBLATT: Now go to Page 35.

2 Line 11.

3 Q. You just have no idea why the public, the  
4 American public, has, over the last several years,  
5 become antismoking?

6 A. I think there are a lot of different  
7 reasons.

8 Q. Tell me some.

9 A. I think, for example, the health issue is  
10 part of it. I'm not sure it is all of it. I think  
11 several years ago the cover of Time Magazine was  
12 about national nannies. We kind of like to tell  
13 each other what to do in the United States. I think  
14 that plays a role in it. Those sort of things. I  
15 think they are societal issues and smoking is one of  
16 them. That is why I said I have to speculate.

17 MS. ROSENBLATT: Line 18.

18 Q. Why do you think smoking is banned in so  
19 many buildings, so many restaurants?

20 A. Because nonsmokers are a majority.

21 Q. Don't you think it is because nonsmokers  
22 have been persuaded by breathing in the smoke of  
23 other people they can get a disease and become ill?

24 A. No, I don't think so.

25 MS. ROSENBLATT: Okay. Now we go to

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1 38, Line 24.

2 Q. How do you have contact? How does the  
3 Tobacco Institute enter relate to its member  
4 companies? Do you have periodic meetings?

5 A. Yes, we do. We have periodic meetings and  
6 staff to staff informal conversations.

7 Q. How often do the periodic meetings take  
8 place?

9 A. It would depend on which meetings they were.

10 Q. Tell me all the different kinds of meetings.

11 A. We have an executive committee made up of  
12 the member companies. They would meet four or five  
13 times a year. We have a management committee. They  
14 would meet more like eight or nine times a year. We  
15 have a state activities committee. Again, it would  
16 be probably eight or nine times a year. I think  
17 there is a budget committee. That is not something  
18 I'm involved with so I don't know.

19 Q. Who attends the executive commit meetings.  
20 Do the presidents of the member companies attends  
21 those meetings?

22 A. Generally, yes.

23 Q. Where are those meetings generally held?

24 A. Either in New York or Washington.

25 Q. If they are held in Washington, are they

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1 held at the offices of the Tobacco Institute or a  
2 hotel?

3 A. They are generally held at the Tobacco

4 Institute.

5 Q. Are they one day meetings or are they  
6 several day meetings?

7 A. More like half a day.

8 Q. What is generally discussed at those  
9 meetings?

10 A. At the executive committee meetings I have  
11 attended, and I'm not a member of the executive  
12 committee, so I don't attend all of them. The  
13 format be work staff reports on various issues that  
14 are of importance. And basically discussion of what  
15 the institute's activities are.

16 Q. Do you think it is fair to say that the  
17 position of the tobacco industry is, we sell a legal  
18 product, the information is out there, if people  
19 smoke and they get cancer, that's just a risk they  
20 are taking?

21 A. I've never heard it formulated.

22 MS. ROSENBLATT: Line 23.

23 Q. Be that as it may. How would you formulate  
24 it? If what I said is unfair or inaccurate, tell me  
25 how it is unfair or inaccurate.

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1 A. That people do have information about  
2 smoking and they should be allowed to make their own  
3 decisions about it as adults. We can decide whether  
4 or not it is something we care to do.

5 MS. ROSENBLATT: Page 42, Line 8.

6 Q. You will not concede that cigarette smoking  
7 has ever caused cancer in a single individual  
8 anywhere on the globe?

9 A. Again, I don't think there is an answer to  
10 that question because causation has not been  
11 established.

12 MS. ROSENBLATT: Now it's Page 49, Line  
13 18.

14 Q. Are you on the management committee?

15 A. No, I am not a member of the management  
16 committee.

17 Q. Who is?

18 A. Mr. Chilcote for the Tobacco Institute.

19 Q. And of course, he is on the executive  
20 committee as well?

21 A. He is the Tobacco Institute person, yes.

22 Q. And the other members are the presidents or  
23 CEOs of the member companies?

24 A. Both the executive and the management  
25 committee.

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1 MR. ROSENBLATT: No. That's the  
2 question.

3 MS. ROSENBLATT: I'm sorry.

4 Q. Both the executive and management committee?

5 A. Not the management committee. That would be  
6 the vice president.

7 Q. Vice president of the member companies like  
8 Philip Morris, RJR Nabisco?

9 A. Yes.

10 Q. Who is on the state activities committee?

11 A. That I don't know.  
12 Q. Is anyone from the Tobacco Institute?  
13 A. I believe Mr. Chilcote.  
14 Q. Are you on any committee that meets either  
15 with the president or vice president of the member  
16 companies?  
17 A. No. Mr. Chilcote is.  
18 Q. He does all of that?  
19 A. Yes. He is the designated member.  
20 Q. Does Mr. Chilcote ever deal directly with  
21 the media?  
22 A. No, not to my knowledge, no.  
23 MS. ROSENBLATT: Okay. I think we go  
24 to Page 59, Line 11.  
25 Q. So what was the PR situation, let's say, in  
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1 1992, public relations situation at the Tobacco  
2 Institute? Did you have a public relations person?  
3 A department?  
4 A. We had a public affairs division, yes.  
5 Q. And what did the public affairs division do?  
6 A. Media relations and also issue management  
7 which would be individuals who were responsible for  
8 keeping track on what was happening on specific  
9 issue. For example, taxes. There would be a tax  
10 issue manager. They would know what hearings were  
11 going on, when, and so on.  
12 Q. For example, when you say media relations,  
13 does the Tobacco Institute periodically send out  
14 materials to the media?  
15 A. Periodically, yes.  
16 Q. And what kinds of materials would they be?  
17 A. A press release on congressional testimony,  
18 for example.  
19 Q. Have you testified before committees of  
20 Congress?  
21 A. I personally have not, no.  
22 Q. Who usually does that on behalf of the  
23 Tobacco Institute?  
24 A. It would depend on the situation.  
25 Generally, it is Mr. Charlie Whitley, who is a  
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1 former congressman from North Carolina who now works  
2 with the Tobacco Institute on a consulting  
3 arrangement.  
4 Q. Is Mr. Whitley a lobbyist?  
5 A. I don't know whether he is a registered  
6 lobbyist or not. I believe he may be.  
7 Q. Well, is he a lobbyist for the tobacco  
8 industry?  
9 A. I don't know if he is a registered lobbyist  
10 or not.  
11 Q. Does Mr. Whitley have an office at the  
12 Tobacco Institute?  
13 A. Yes.  
14 Q. Since when?  
15 A. The past two years probably approximately.  
16 Q. Did Mr. Whitley get defeated in an election  
17 or did he quit Congress?

18 A. He chose to retire from Congress.  
19 MS. ROSENBLATT: Line 9.  
20 Q. As a practical matter, does he spend most of  
21 his time at his office at the Tobacco Institute?  
22 A. Yes.  
23 Q. Does he have any clients other than tobacco  
24 interests, to your knowledge?  
25 A. I believe he works part-time and solely for  
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1 the Tobacco Institute.  
2 MS. ROSENBLATT: Page 66, Line 23.  
3 Q. What is the warning say about pregnancy?  
4 A. Smoking may complicate pregnancy. You want  
5 the whole warning?  
6 Q. Yes. It's a sentence. It's a one-sentence  
7 warning.  
8 A. "Smoking may complicate pregnancy and result  
9 in premature birth."  
10 Q. Fetal injury and low birth weight, right?  
11 A. To the best of my recollection, yes.  
12 Q. Do you believe that?  
13 A. That it may, yes.

14 MS. ROSENBLATT: 69, Line 15.

15 Q. When something happens at the Tobacco  
16 Institute which causes you to want to contact  
17 someone with scientific knowledge on the issue of  
18 smoking and health, is there a particular person  
19 within the Tobacco Institute you can go to?  
20 A. Well, on the smoking and health issue, in  
21 almost eight years I have been there it very rarely  
22 comes up. No, there is not someone I can go to.  
23 There is no one person assigned to that.  
24 Q. Why does it rarely come up? Is that because  
25 the Tobacco Institute chooses not to address those  
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1 issues? I would think--I mean, I know the media  
2 would be interested, so why does it rarely come up?  
3 A. In fact, the media very rarely asks the  
4 question. So, no, it doesn't come up very often. I  
5 know the position of the industry. I would respond  
6 to the question and that's the extent of it.  
7 Q. Well, how would you answer this question?  
8 We were talking about the warning before and we both  
9 know that the tobacco industry is required by law to  
10 rotate on the packages of its cigarettes and rotate  
11 in its advertising four different warnings; is that  
12 correct?  
13 A. Yes.  
14 Q. One of the warnings says, "Cigarette smoking  
15 causes lung cancer, heart disease, emphysema, and  
16 may complicate pregnancy." Is that a true  
17 statement?  
18 A. If someone asks that question, how would I  
19 respond to that? Is that your question?  
20 Q. I'm simply asking that question and asking  
21 you to respond.  
22 A. The industry's position is that smoking has  
23 not been established to cause lung cancer, heart  
24 disease and emphysema.



25 Q. So it is the industry's position that that  
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1 very definitive statement on the package of your  
2 cigarettes is not accurate?

3 A. We differ with that warning, yes.

4 Q. And the only reason you put that warning on  
5 is because it is required by law because it is the  
6 industry's position that it is not accurate?

7 A. That's right.

8 MS. ROSENBLATT: Now the next question,  
9 you leave out the number on Line 17.

10 Q. What would it take to prove to the Tobacco  
11 Institute or the industry that cigarette smoking  
12 does cause cancer? You say it hasn't been proven.  
13 I say, okay, what do I have to do to prove it to  
14 you? What do I have to do or what does the  
15 scientific community or the medical community have  
16 to do to satisfy you, the Tobacco Institute and the  
17 tobacco industry, that cigarette smoking causes  
18 cancer?

19 A. We could start at the beginning. The  
20 studies cited don't conclude that smoking causes  
21 cancer. Some of those studies show that smoking may  
22 increase your risk for lung cancer, for example.

23 A biological mechanism, a causative agent,  
24 has not been established, and thus the industry's  
25 position is formed.

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1 In specific answer to your question, I don't  
2 know what would satisfy the industry. I would  
3 venture that it would be finding a causative agent,  
4 but short of that, I don't know.

5 MS. ROSENBLATT: Line 17.

6 Q. So back to my original question. How could  
7 anyone, any scientist, any study, any medical  
8 school, ever prove to the tobacco industry that  
9 cigarette smoking causes cancer, heart disease and  
10 emphysema?

11 A. Again, I don't know. I would think the  
12 finding of a causative factor would be in that  
13 equation somewhere.

14 Q. Namely, a causative factor that causes  
15 cancer? Do you, as you sit here today, recognize  
16 any factor in the American environment that causes  
17 cancer?

18 A. It is my understanding that there are some  
19 chemicals that have been determined to cause cancer,  
20 yes.

21 Q. Which ones?

22 A. I can't give you a list of them.

23 Q. Can you give me one?

24 A. If I thought about it for--it is not  
25 something I have at the tip of my tongue.

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1 Q. Have you studied the chemical makeup of  
2 tobacco cigarettes?

3 A. No. I have not studied that.

4 MS. ROSENBLATT: Page 74, Line 24, but  
5 25 is out.

6 Q. Okay. You would agree, would you not, there  
7 are physicians and medical people and scientific  
8 people in America who are convinced cigarette  
9 smoking causes cancer and heart disease and other  
10 diseases?

11 A. I don't know how many, but, yes, I  
12 understand that to be so.

13 Q. Can you site me to a single medical doctor  
14 unconnected with the Tobacco Institute or tobacco  
15 industry, zero connection to the tobacco industry,  
16 who has ever taken the position that cigarette  
17 smoking is fine, you can smoke three packs a day all  
18 your life, you're not going to get cancer from that,  
19 you may get cancer from something else? Has anyone  
20 ever taken that position to your knowledge?

21 A. Not to my knowledge.

22 MS. ROSENBLATT: Page 77, Line 1.

23 Q. What is the function of your trade  
24 association?

25 A. To represent the industry on industry-wide  
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1 matters, and that is what other trade associations  
2 in Washington do, too. Selling product is generally  
3 done by companies who have products to sell.

4 MS. ROSENBLATT: And then Page 80, Line  
5 4.

6 Q. My question is, does the Tobacco Institute  
7 have anything to do with tobacco advertising?

8 A. We have nothing to do with the company's  
9 decisions on marketing and advertising. We do speak  
10 on tobacco advertising issues. If someone were, for  
11 example, to ask a question like you just did about  
12 billboards, we would respond.

13 That billboard, a company's decision about  
14 which brand to advertise on a billboard on a freeway  
15 is something we have nothing to do with.

16 MS. ROSENBLATT: Now Line 19, starting  
17 with "You."

18 Q. You have spoken out publicly on that,  
19 haven't you? You have been quoted in the  
20 newspapers?

21 A. In general terms, yes.

22 Q. What do you say--go ahead.

23 A. I'm sorry. Because we represent the whole  
24 industry and not specific companies, you get into an  
25 area where it would be inappropriate for me or

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1 anyone else in the Tobacco Institute to comment on a  
2 specific brand advertisement. That is why I say  
3 yes, we have commented generally about tobacco  
4 advertising.

5 MS. ROSENBLATT: Line 19.

6 Q. When do you think most people start smoking?  
7 Do they take it up at 35? Do you think they take it  
8 up when they are teenagers?

9 A. The majority take it up as teenagers.

10 MS. ROSENBLATT: Now Page 83, Line 5.

11 Q. In terms of the various meetings that the  
12 Tobacco Institute has, are there meetings attended  
13 by anyone from the Council for Tobacco Research?  
14 A. Not that I'm aware of, no. I have never  
15 seen anyone from that organization.  
16 Q. Do you have dealings with the Council for  
17 Tobacco Research?  
18 A. I never have.  
19 Q. Never?  
20 A. Never.  
21 Q. Do you know what they do?  
22 A. I have a general idea.  
23 Q. What is the general idea?  
24 A. That they sponsor research activities.  
25 Q. Have you ever seen the end result of any of  
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1 their research activities in the form of a report or  
2 anything like that?  
3 A. I have not.  
4 Q. Do you know what they are researching, what  
5 areas, what issues?  
6 A. Tobacco. No, I don't. Other than their  
7 name implies, there are tobacco issues involved.  
8 Q. Do you know anyone over there?  
9 A. No, I don't.  
10 MS. ROSENBLATT: Line 9.  
11 Q. What are the instructions as to how a  
12 question would be answered along the line of, does  
13 cigarette smoking cause cancer?  
14 A. It would be answered to a member of the  
15 general public the same way I have answered it to  
16 you.  
17 MS. ROSENBLATT: Now page 88, Line 3.  
18 Q. When there is a ban being discussed in a  
19 city or a state, let's say banning smoking in all  
20 restaurants, how does the Tobacco Institute get  
21 involved in such an issue?  
22 A. Generally, we would become aware of it,  
23 whether it was by a media call coming into us or by  
24 a lobbyist or legislative representative hearing  
25 about it, and from there it really depends on what  
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1 the situation is. We do not have hard and fast  
2 guidelines on what we would do.  
3 MS. ROSENBLATT: 89, Line 4.  
4 Q. Let's get a little specific then on the  
5 smoking ban. To my understanding, it wasn't too  
6 long ago smoking was banned in all restaurants in  
7 Los Angeles. Big issue in Los Angeles, right?  
8 A. Yes.  
9 Q. And my understanding, correct me if I'm  
10 wrong, is that it passed and today smoking is banned  
11 if not in all restaurants, 98 percent of them in Los  
12 Angeles?  
13 A. I don't know what happened over the summer.  
14 Q. So the Tobacco Institute hears that, hey,  
15 there is a move afoot to ban smoking in all  
16 restaurants in Los Angeles.  
17 What does the Tobacco Institute gear up to

18 do in that kind of scenario, if anything?  
19 A. We would consider speaking to members of the  
20 industry council to present the industry's views.  
21 If there was a hearing, someone may or may not  
22 testify. I don't believe we testified in Los  
23 Angeles. We would see that the business  
24 community--excuse me--we would see what the business  
25 community thinks about it, those types of things.

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1 Q. Would it be accurate to say that the Tobacco  
2 Institute, not necessarily in practical terms, but  
3 certainly in philosophical terms, is against all  
4 smoking bans in public buildings or in restaurants?  
5 Let me limit it to that.

6 A. Yes. We are against bans in public  
7 buildings and restaurants.

8 Q. All public buildings and all restaurants?

9 A. There may be an exception. I cannot think  
10 of one, so, yes.

11 Q. I guess there would be an exception if there  
12 was a restaurant that only caters to children.  
13 Would you probably be in favor of a ban if there was  
14 such a restaurant?

15 A. I don't know of such a restaurant.

16 Q. What is the Tobacco Institute's position on  
17 separate sections in a restaurants? Let's say a  
18 smoking section and a nonsmoking section.

19 A. That's okay with us.

20 MS. ROSENBLATT: Now Page 92, Line 19.

21 Q. Isn't one of the reasons that the tobacco  
22 industry takes the position that it hasn't been  
23 proven is so that people will continue to smoke or  
24 at least hear something on the other side of the  
25 ledger?

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1 A. No. The reason we take that position and  
2 that I would state it in response to a question is  
3 because that is what the industry believes to be so.

4 MS. ROSENBLATT: Now it's Page 100,  
5 Line 7.

6 Q. Do you ever have occasion to go to tobacco  
7 country where the cigarettes are actually  
8 manufactured, North Carolina, Virginia?

9 A. I have been to North Carolina and Virginia,  
10 yes.

11 Q. What would occasion you to go there? First  
12 of all, how often?

13 A. A couple of times a year to North Carolina  
14 either to meet with tobacco growers to let them know  
15 what is going on in terms of tobacco issues or there  
16 may be a meeting at RJR, R.J. Reynolds Tobacco  
17 Company in Winston-Salem.

18 MS. ROSENBLATT: 101/8.

19 Q. So excluding the time you were on maternity  
20 leave, let's say in the two years before that, how  
21 often did you have occasion to go to a meeting of  
22 one kind or another in North Carolina?

23 A. Three or four times maybe.

24 Q. Three or four times a year?

25 A. Yes.  
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1 Q. How long would you usually stay?  
2 A. Be in and out the same day, depending on  
3 flight schedules. A meeting would last a couple of  
4 hours.  
5 Q. Where does the money come from to pay the  
6 salary from the Tobacco Institute people, from the  
7 member companies?  
8 A. Yes.  
9 Q. Do each of the member companies pay an equal  
10 amount or do the larger companies pay more?  
11 A. My understanding is they are assessed  
12 roughly on brand share.  
13 MS. ROSENBLATT: Page 103, Line 17.  
14 Q. In terms of the kind of entity that the  
15 Tobacco Institute is, is it a corporation?  
16 A. I believe it is a not-for-profit  
17 organization, but, again, I think that is a matter  
18 of legal terms. I don't know.  
19 Q. A not-for-profit?  
20 A. A tax term.  
21 Q. Is it organized under the laws of DC?  
22 A. I don't know.  
23 Q. Does the Tobacco Institute have an in-house  
24 lawyer?  
25 A. We do not.  
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1 Q. Who is your law firm, this firm?  
2 A. Covington and Burling represents us.  
3 Q. Since you have been with the Tobacco  
4 Institute, has this law firm always represented the  
5 Tobacco Institute?  
6 A. Yes.  
7 Q. Since you have been with the Tobacco  
8 Institute, have they ever had any kind of  
9 publication?  
10 A. When I first joined, there was something  
11 called the Tobacco Observer. It was cancelled  
12 relatively soon after I joined, so I don't know who  
13 it wasn't to or what it was.  
14 MS. ROSENBLATT: 106.  
15 Q. Is any research of any kind done under the  
16 auspices and direction of the Tobacco Institute?  
17 A. Not generally, no. We don't sponsor  
18 research. We have commission surveys and the like,  
19 but we don't conduct scientific research.  
20 MS. ROSENBLATT: 110, Line 21.  
21 Q. Do you know Dr. James Glenn?  
22 A. I do not.  
23 Q. The name doesn't mean anything to you?  
24 A. I don't recall ever hearing it before.  
25 Q. What does it say on the tobacco---  
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1 MS. ROSENBLATT: I think it's Line 14,  
2 next page.  
3 Q. Does the Tobacco Institute conduct any

4 activities outside of the United States?  
5 A. No, we do not.  
6 Q. So it is a hundred percent within the United  
7 States, what you do?  
8 A. Yes. In fact, we only represent the  
9 domestic companies: Philip Morris-U.S.A., R.J.  
10 Reynolds Tobacco. Not R.J. Reynolds Tobacco  
11 International, things like that.  
12 MS. ROSENBLATT: Page 113, Line 25.  
13 Q. And how exactly mechanically does the  
14 Tobacco Institute get involved at the state  
15 legislative level? Do you send representatives  
16 there physically?  
17 A. No. Sometimes, yes, we may send  
18 representatives there physically. In most  
19 states--and again, because of the reorganization, I  
20 don't know what the status is exactly--they would  
21 have a contract lobbyist, and it would be that  
22 person's responsibility to monitor legislation.  
23 Q. Are there particular lobbying firms that the  
24 Tobacco Institute uses?  
25 A. We would have a contract lobbyist, yes, so  
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1 that would be a firm or a person, depending on the  
2 situation, we would use.  
3 Q. What are some of the firms you use most  
4 frequently, contract lobbyists?  
5 A. I don't know who they are in each of the 50  
6 states. No names come to mind.  
7 Q. Do you have contract lobbyists at the  
8 federal level?  
9 A. I don't know.  
10 Q. Who would know that, the president?  
11 A. Mr. Chilcote, certainly.  
12 Q. Does lower tar in a cigarette mean the  
13 cigarette is less likely to cause health problems?  
14 A. I don't believe.  
15 Q. Is it your understanding the percentage of  
16 tar has anything whatsoever to do with health?  
17 A. The industry, I'm not aware of an industry  
18 position on that.  
19 Q. But what is your understanding of tar  
20 itself? What is tar? You see it constantly in the  
21 ads. Tar.  
22 A. Right.  
23 Q. What is it?  
24 A. It is something that is measured by the FDC  
25 method and included in the advertisements. My  
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1 understanding is it is a condensate of the smoke. I  
2 may be wrong. This is not something I have looked  
3 into.  
4 MS. ROSENBLATT: Next page.  
5 Q. Is it your understanding that low tar  
6 cigarettes are less of a risk than high tar  
7 cigarettes, less of a health risk?  
8 A. Again, the industry does not take that  
9 position.  
10 Q. Then do you know, for example, why many of

11 the advertisements stress the fact of low tar and  
12 nicotine?

13 A. I am aware there is a consumer preference  
14 for lower tar and lower nicotine cigarettes. My  
15 personal experience, I refer the Marlboro Lights;  
16 they taste different, they taste different in a  
17 sense you can taste the difference between Coke and  
18 RC. That is my understanding of low tar, low  
19 nicotine.

20 MS. ROSENBLATT: 117.

21 Q. Let me see the percentages on the pack just  
22 out of curiosity. So, it is your understanding that  
23 the only reason that cigarette companies stress in  
24 their advertising, some cigarette companies stress  
25 in some of their advertising, low, lower, lowest tar

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1 and nicotine, is because that has become a consumer  
2 preference?

3 A. That is my understanding.

4 Q. And no one has ever convinced you or shown  
5 you evidence that lower tar and lower nicotine means  
6 anything from a health standpoint?

7 A. No one has ever made such a statement, no,  
8 or shown me a document. No. I don't believe that  
9 is the industry's contention.

10 Q. Well, what is the industry's contention on  
11 tar and nicotine?

12 A. That there are brand differentiations that  
13 some consumers prefer one to the other. But that  
14 there is not--just leave it there. That is my  
15 understanding of it.

16 Q. Do you believe that there is a consumer  
17 conception that low tar and nicotine means it is a  
18 safer cigarette from a health standpoint?

19 A. I don't know that, no.

20 Q. And what you're saying to me is that  
21 certainly the tobacco industry and certainly the  
22 Tobacco Institute has never suggested to the  
23 consumer that low tar and nicotine means it is a  
24 safer, less dangerous cigarette?

25 A. We have never made such a suggestion.

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1 Q. And they always talked about it in the ads  
2 MG, period, tar like 11 milligrams, period, or four  
3 milligrams, period. What does MG mean?

4 A. I don't know.

5 Q. Having worked in government, do you even  
6 know why the government is interested in that or why  
7 is that put in all the ads?

8 A. No.

9 MS. ROSENBLATT: We are on Page 127,  
10 Line 4.

11 Q. You were working for the Tobacco Institute  
12 when the ban on smoking on domestic airlines went  
13 into effect?

14 A. Yes, I was.

15 Q. What exactly did the Tobacco Institute do?  
16 What did you do in connection with trying to prevent  
17 that ban from going into effect?

18 A. The Tobacco Institute specifically made its  
19 views known that we were in opposition to the  
20 smoking ban. Again, we would have done that with  
21 legislators. We did that with the media.  
22 Q. Who from the Tobacco Institute testified  
23 before any congressional committee dealing with that  
24 subject, either House or Senate?  
25 A. I don't recall who would have testified, if  
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1 we testified at all.  
2 Q. You're not sure?  
3 A. No, I am not.  
4 Q. But you did not testify on that issue?  
5 A. No, I did not.  
6 Q. Other than being against it, did the Tobacco  
7 Institute put out a position paper on that, a  
8 brochure, to send to the media as to why you opposed  
9 the ban?  
10 A. We had a press release, if not two perhaps,  
11 on the issues because there were congressional  
12 hearings. So we would have had a press release, but  
13 we did not have a brochure that I can recall.  
14 Q. For how long a period of time was that an  
15 issue, and by that I mean, where it became obvious  
16 to you there was a concerted push for that ban on  
17 the domestic airlines until it actually became law?  
18 A. Well, there was legislation introduced, and  
19 then there was the two-hour ban that was supposed to  
20 run two years, but, in fact, it was never allowed to  
21 sunset before the total ban or almost total ban of  
22 six hours went into effect. So it would have been  
23 over a period of probably close to two years it was  
24 an issue that raised and diminished in its  
25 visibility.

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1 Q. Did any of the tobacco companies on an  
2 individual basis deal with that issue or was that  
3 pretty much left to the Tobacco Institute to handle?  
4 A. I don't know what the member company's  
5 individual activities might have been.  
6 Q. Who was the lobbyist for the Tobacco  
7 Institute on that issue, the smoking ban on  
8 airlines?  
9 A. We don't have lobbyists for specific issues.  
10 Q. As a practical matter, was any lobbyist  
11 handling that issue on behalf of the tobacco  
12 industry?  
13 A. No one singly that I recall.  
14 Q. No firm comes to mind?  
15 A. No.  
16 Q. And what was your understanding of the  
17 reason why that was enacted into law from the  
18 standpoint of the proponents? Why was it necessary?  
19 What were they saying?  
20 A. They were saying that they thought the  
21 separate sections were not working, that the  
22 nonsmokers in the front of the plane in this case  
23 were being subjected to environmental tobacco smoke.  
24 Q. Did you personally or the Tobacco Institute



25 get involved in issues such as how to make the  
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1 ventilation system better, how in some way to  
2 maintain the status quo where you would have a  
3 smoking and nonsmoking section and yet not subject  
4 nonsmokers to the passive smoke?

5 A. I don't recall us being involved in that.  
6 I'm trying to recall so I can give you an accurate  
7 answer. No, to my knowledge, I was not involved in  
8 it.

9 Q. What was the Great American Welcome?

10 A. That was a program, and I don't remember the  
11 year, whereby we invited restaurants and hospitality  
12 organizations to join us in extending a welcome to  
13 both smokers and nonsmokers. They were again using  
14 a restaurant as an example. Organizations that  
15 accommodated both smokers and nonsmokers.

16 MS. ROSENBLATT: I think the next one  
17 is 123, Line 25.

18 Q. According to the New York Times, the Tobacco  
19 Institute took out full-page ads in 17 of the  
20 country's largest newspapers. Does that sound about  
21 right; you think that's accurate?

22 A. My recollection was about ten.

23 Q. Whose idea was the Great American Welcome?

24 A. There was no single person that was  
25 involved. I was involved in its development. But,  
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1 again, there is no one person I can point to.

2 MS. ROSENBLATT: Okay. Line 1 on Page  
3 139. I guess it's the page before. Sorry. Line  
4 16, 138.

5 Q. Tell me about your supervisory  
6 responsibilities.

7 A. We have a media relations staff that is  
8 currently two other people and a secretary, and so  
9 there are personnel problems that have to be  
10 handled, those kinds of things, as well as  
11 allocating people's time and trying to provide  
12 resources to the legislative divisions when they ask  
13 us for it.

14 Q. What kinds of resources would you be  
15 providing to the legislative divisions?

16 A. Something like who is going to write a press  
17 release and what that press release was going to  
18 say, or they would like a spokesperson to testify at  
19 a state hearing, for example, and how that testimony  
20 is going to get written and who is available to  
21 travel to that state capital. So managing those  
22 sorts of things takes another, I would say, 25  
23 percent of my time.

24 Q. How about the other 25 percent?

25 A. Assisting Mr. Chilcote on requests he might  
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1 have, discussing things with member companies'  
2 staff, again letting them know what is happening and  
3 what the media calls we are getting on a given day

4 are about.

5 MS. ROSENBLATT: Page 141, Line 2.

6 Q. And if there is a significant smoking ban  
7 piece of legislation such as there was when they  
8 were outlawing smoking in all restaurants in Los  
9 Angeles, your focus would be on that? That is what  
10 I understand you to say when you say it was driven  
11 by what is going on.

12 A. That's right.

13 Q. Does the Tobacco Institute provide speakers  
14 to groups who want to debate on the smoking issue,  
15 smoking and health?

16 A. We consider those requests and have, yes.

17 Q. Have you ever done that? Do you do any of  
18 that?

19 A. Yes.

20 MS. ROSENBLATT: Now 147, Line 6.

21 Q. What did you do to prepare for today's  
22 deposition, if anything?

23 A. I met with my attorney twice. That's all.

24 Q. When was the first time you met?

25 A. A week ago Tuesday, may have been Wednesday.

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1 Q. Here in these offices?

2 A. No. We met in my office.

3 Q. And with who in particular, which lawyer or  
4 lawyers?

5 A. Mr. Duke, Mr. Dym, I believe Mr. Remes was  
6 there.

7 Q. How long did you spend on that meeting about  
8 a week ago?

9 A. We met twice. Both were under two-hour  
10 meetings.

11 Q. The same three lawyers at the second  
12 meeting?

13 A. Yes. And Mr. Northrip from Shook, Hardy.

14 MS. ROSENBLATT: Line 8, 148.

15 Q. How can you answer media inquiries relating  
16 to the issue of tobacco and health?

17 A. How can I answer?

18 Q. Yes. Since you don't really know anything  
19 about that issue other than to say that it hasn't  
20 been proven that cigarette smoking causes cancer.

21 A. I think, as we discussed earlier this  
22 morning, I have reviewed the congressional testimony  
23 going back to the labeling hearings and the like. I  
24 have looked at the issues and I'm comfortable with  
25 the industry position, so that is how I can respond

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1 to media inquiries, those few I have gotten over  
2 eight years.

3 Q. The congressional testimony of who?

4 A. I don't recall who it was. It was volumes  
5 of testimony going back to the labeling hearings,  
6 for example.

7 MS. ROSENBLATT: Page 151, Line 14.

8 Q. When someone from the media does ask a  
9 question to you dealing with the issue of health and  
10 smoking, other than saying what you said on this

11 deposition, you don't say anything more than that,  
12 do you?  
13 A. No. I wouldn't.  
14 MS. ROSENBLATT: 153, Line 13.  
15 Q. Do you have at the Tobacco Institute a  
16 collection of every time you have been quoted?  
17 A. No, we don't.  
18 Q. That is not kept?  
19 A. No, sir, it is not.  
20 Q. That is why you can feel comfortable in  
21 doing your job without even knowing what the Council  
22 for Tobacco Research does?  
23 A. The Council for Tobacco Research is not  
24 affiliated with the Tobacco Institute. Why would I  
25 need to know what they do to do my job?  
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1 MS. ROSENBLATT: Now 155, Line 13.  
2 Q. That is why you would want to know what the  
3 CTR was doing, so you could answer questions  
4 intelligently about the issue between smoking and  
5 health?  
6 A. I don't believe that is an accurate premise,  
7 no. I have gotten along very comfortably without  
8 knowing about CTR research.  
9 MS. ROSENBLATT: Page 158, Line 3.  
10 Q. You have zero personal experience with CTR  
11 based on your testimony today?  
12 A. But I have almost eight years of experience  
13 with this industry. My job is not to explain the  
14 industry's research. I am not affiliated nor is the  
15 organization I work for with CTR.  
16 Q. What has this great industry ever done to  
17 make a safer cigarette? Do you know anything about  
18 the history of that?  
19 A. No, I don't.  
20 MR. ROSENBLATT: Continue?  
21 MS. ROSENBLATT: Yes.  
22 Q. While you were on maternity leave during the  
23 last year, let's say, are you aware of any new  
24 reports that have come out on the issue of smoking  
25 and health?  
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1 A. Not that I recall. Certainly none that were  
2 brought to my attention.  
3 Q. What is the mechanism whereby the Tobacco  
4 Institute keeps the member companies aware of the  
5 kinds of media inquiries you are getting and how you  
6 are responding?  
7 A. There is no such mechanism.  
8 MS. ROSENBLATT: 159.  
9 Q. Is there anyone employed in Washington, D.C.  
10 by the Tobacco Institute that has any kind of  
11 scientific or medical background?  
12 A. I don't believe so, no. In terms of Tobacco  
13 Institute employees, no.  
14 Q. Well, does the Tobacco Institute hire  
15 independent contractors in those fields?  
16 A. We do from time to time, yes.  
17 Q. And for what reason?

18 A. To review literature and give us their  
19 opinion; not on the smoking and health issue, but  
20 perhaps environmental tobacco smoke.

21 Q. Who have you used as an outside consultant  
22 on the issue of environmental tobacco smoke?

23 A. I think I listed some earlier. Dr. Gio  
24 Gori, Dr. Whitosh.

25 Q. Other than those?  
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1 A. There are a number whose names simply aren't  
2 rattling right off.

3 Q. Does the Tobacco Institute make political  
4 contributions?

5 A. Yes, we do.

6 Q. And who's in charge of that?

7 A. The federal relations division, actually  
8 Mr. Chilcote.

9 Q. Do you know, for example, how much money was  
10 given in the most recent presidential election?

11 A. No, I don't.

12 Q. Do you have any information on that subject  
13 at all?

14 A. No, I don't.

15 Q. Does the Tobacco Institute file public  
16 disclosure forms?

17 A. Of what kind?

18 Q. Such as political contributions?

19 A. We would comply with all the federal and  
20 state laws that are necessary. I know there are  
21 some. They vary. I don't know what each is.

22 Q. What laws apply to the Tobacco Institute?  
23 Have you ever seen a public disclosure form filled  
24 out itemizing the amounts that the tobacco industry  
25 has given to various political candidates?  
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1 A. No. I have never seen a public disclosure  
2 form.

3 Q. Who writes the checks for the Tobacco  
4 Institute?

5 A. I don't know.

6 MS. ROSENBLATT: I think that is it.  
7 We finished. Should we take a break?

8 THE COURT: Yes. Okay. Let's take a  
9 break, folks, please.

10 (The jury exited the courtroom and the  
11 following proceedings were had:)

12 THE COURT: Okay. Just one quick  
13 question here. On Donald Johnston's depo. Who is  
14 handling that?

15 THE COURT: I don't have your  
16 designations. I think you gave me the designations  
17 for Mr. Brookes.

18 MR. SCHNEIDER: Oh, all right.

19 THE COURT: Yes. That's better.

20 MR. SCHNEIDER: Sorry.

21 THE COURT: No problem. Better to know  
22 it now than later.

23 (A brief recess was taken.)

24 (The jury entered the courtroom and the

25 following proceedings were had:)  
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1 THE COURT: What we are going to do  
2 now?  
3 MR. ROSENBLATT: It's called more of  
4 the same.  
5 THE COURT: Another witness by  
6 deposition.  
7 MR. ROSENBLATT: This is the deposition  
8 of Walker Merryman, also with the Tobacco Institute,  
9 taken in Washington, D.C., November 18, 1993.  
10 (The deposition of WALKER MERRYMAN was read  
11 to the jury as follows:)  
12 MS. ROSENBLATT: Page 4, Line 22.  
13 Q. Tell us your name, please, and your address.  
14 A. Walker Merryman. Home address is  
15 [DELETED].  
16 Q. Who are you employed by?  
17 A. The Tobacco Institute.  
18 Q. And what is your title?  
19 A. Vice president and director of  
20 communications.  
21 Q. How long have you had your present job with  
22 the Tobacco Institute?  
23 A. My present position, since I believe 1982.  
24 Q. And you have been with the Tobacco Institute  
25 starting when?  
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1 A. 1976.  
2 Q. Continuously from '76 up until today?  
3 A. That's correct.  
4 Q. Trace for me, if you would, the different  
5 titles, the different lines of work that you have  
6 done since 1976.  
7 A. I was hired in 1976 as assistant to the  
8 president of the Tobacco Institute. In  
9 approximately 1980, I became director of  
10 communications. And then in approximately 1982, I  
11 became vice president and director of  
12 communications.  
13 Q. Who hired you?  
14 A. Mr. Horace Kornegay.  
15 Q. He was the president?  
16 A. He was.  
17 MS. ROSENBLATT: Now Page 10, Line 1.  
18 I guess it's Page 9.  
19 Q. Mr. Kornegay, he was the president of the  
20 Tobacco Institute from when to when?  
21 A. Well, he was president when I arrived, and  
22 as I understand it, he became president in 1971, I  
23 believe. He retired from the institute several  
24 years ago, five to seven years ago.  
25 Q. Who had been all the presidents since you  
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1 have been here? After Kornegay came who?  
2 A. Sam Chilcote who is the president.  
3 Q. Really, you have only been with two people

4 who were president?  
5 A. That's right.  
6 Q. What is an average day for you? What do you  
7 do?  
8 A. A great deal of time is spent responding to  
9 telephone calls from reporters who have inquiries on  
10 a wide variety of subjects.  
11 MS. ROSENBLATT: Line 2.  
12 MR. ROSENBLATT: Yes.  
13 Q. You personally do that, talk to reporters?  
14 A. I personally do, yes, sir.  
15 Q. In terms of responding to inquiries, how do  
16 you answer inquiries which deal with a specific, a  
17 new study that might have appeared in the New  
18 England Journal of Medicine, the Journal of the  
19 American Medical Association, that kind of thing,  
20 which is basically antitobacco, and then they say  
21 what do you have to say about that article?  
22 A. It would be typical for us not to respond  
23 immediately because typically we would not have seen  
24 the study. We would want to have some guidance from  
25 someone who was expert in that area before we  
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1 responded.  
2 Q. On such questions, who would you get the  
3 guidance from? Is there an in-house scientific  
4 person at the Tobacco Institute?  
5 A. No. There is not.  
6 Q. Well, let's say a fairly technical article  
7 appears in the New England Journal of Medicine. It  
8 is obvious to you as a layman from reading it that  
9 it is very antitobacco, but you may not be familiar  
10 with all the words or the jargon in the article, so  
11 what would be your source to help explain it to you  
12 better so you can answer an immediate question  
13 better?  
14 A. We might ask a consultant to read this  
15 report, this study, and tell us what it means. That  
16 is, of course, providing we have decided we wish to  
17 respond at all.  
18 MS. ROSENBLATT: Page 26, Line 2.  
19 Q. Let's say this happens in terms of a media  
20 inquiry. You get a call from the New York Times and  
21 the reporter says, I got a package of cigarettes in  
22 front of me and there is a warning on this package  
23 which says, Surgeon General's warning. What does  
24 the warning say about cancer, do you know?  
25 A. There are four different warning notices  
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1 that appear on the cigarette packs in the ads. I  
2 don't recall the specific wording of each.  
3 Q. I think only one of them specifically  
4 mentions the word cancer. What does that warning  
5 say, to the best of your recollection?  
6 A. "Surgeon General's Warning: Cigarette  
7 smoking causes cancer, heart disease and emphysema."  
8 Q. And the reporter says to you, I got it in  
9 front of me. It says that cigarette smoking causes  
10 lung cancer and heart disease and emphysema. Is

11 that true?  
12 A. I don't know if it is or not. It is  
13 certainly true that the warning appears.  
14 MS. ROSENBLATT: 27, Line 7.  
15 MR. ROSENBLATT: Line 7.  
16 MS. ROSENBLATT: Yes.  
17 Q. How can they be informed when you are not  
18 informed? You don't know if it's true. How does  
19 the guy in the street who is on an assembly line at  
20 Chevrolet, how is he going to know if you don't  
21 know?  
22 A. Various public opinion polls over the years  
23 have indicated an excess of 90 percent of the  
24 American public know and understand what the Surgeon  
25 General and others have said about smoking. And I  
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1 think, therefore, they are informed about the  
2 possible risks.  
3 Q. As I understood your testimony, your bottom  
4 line answer to the question whether or not cigarette  
5 smoking causes cancer would be you don't know  
6 whether it does or it doesn't?  
7 A. That is correct.  
8 Q. What effort have you personally made to find  
9 out whether it does or doesn't?  
10 A. I have read a great many of the statements  
11 made by scientists who have studied questions  
12 surrounding smoking and health issues made before  
13 congressional committee hearings dating back to the  
14 mid 1960s in which a great many questions about  
15 smoking and health issues were explored.  
16 MS. ROSENBLATT: Line 11.  
17 Q. What is your evidence on the other side of  
18 the coin?  
19 A. As I've said, there are a great many people  
20 in science who studied these issues who testified  
21 before Congress over the years who have questions  
22 about whether or not it has ever been established  
23 that smoking causes the diseases that it has been  
24 associated with.  
25 Q. Can you name any of them?  
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1 A. I would have to go back and look. It has  
2 been a very long time. This is not an issue that  
3 comes up with any great frequency at all.  
4 Q. As you sit here today, are you aware of any  
5 physician unconnected with the tobacco industry who  
6 publicly takes the position that it has not been  
7 proven that cigarette smoking causes cancer?  
8 A. No, I am not.  
9 Q. Have you ever heard of Dr. James Glenn?  
10 Does that name ring a bell to you at all?  
11 A. I don't believe so.  
12 Q. What do you know about the Council for  
13 Tobacco Research?  
14 A. It is, to the best of my knowledge, an  
15 organization which exists to fund scientific  
16 research and it receives its funding from the  
17 tobacco industry.

18 Q. In the same manner that the Tobacco  
19 Institute receives its funding from the tobacco  
20 industry?

21 A. I don't really know.

22 Q. Other than that general statement, do you  
23 know anything specifically about the Council for  
24 Tobacco Research or the members of any scientific  
25 Advisory Board of the Council for Tobacco Research,  
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1 or what kind of things they research?

2 A. I don't really have any specific knowledge  
3 in that area.

4 Q. Well, for example, have you ever seen a  
5 published study, formal, informal, or unpublished  
6 for that matter, that was reduced to writing in  
7 perhaps an informal memo form as to any research  
8 conducted by the Council for Tobacco Research?

9 A. I don't think so. Not if I understood your  
10 question.

11 Q. Was there anything unclear?

12 A. It is a little convoluted. If you can  
13 better rephrase it, I might be able to answer it  
14 better.

15 Q. It is an all-encompassing question initially  
16 as to whether or not you have ever seen anything  
17 coming out of the Council for Tobacco Research,  
18 either directly or any study they ever funded, where  
19 you saw any kind of document describing what they  
20 were researching and what was the result of a given  
21 piece of research?

22 A. The only thing I have ever seen is their  
23 annual report which lists, as I remember, the  
24 research efforts that they are currently funding,  
25 and I believe some of the ones they have funded in  
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1 the past.

2 MS. ROSENBLATT: 31.

3 Q. The Council for Tobacco Research would send  
4 that to the Tobacco Institute or you would have to  
5 ask for it?

6 A. Apparently I'm on a list to receive it.

7 Q. And you get it?

8 A. Yes.

9 Q. Annually?

10 A. Yes.

11 Q. How long a report is that about?

12 A. Well, I suppose it's two hundred pages  
13 perhaps.

14 Q. And in those two hundred pages, what I'm  
15 trying to understand is whether or not contained  
16 therein is ever a report indicating the results of a  
17 given piece of research?

18 A. I frankly don't recall.

19 Q. Do you have any concept of what the Council  
20 for Tobacco Research, what kind of research they  
21 conduct on what subjects?

22 A. No. I really don't know what research they  
23 conduct. I don't think they conduct research  
24 themselves.



25 Q. No, but in terms of the grants they give  
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1 out, in what areas are they giving those grants out?  
2 A. I don't know.  
3 Q. Have you read various Surgeon General's  
4 reports over the years?  
5 A. I have read some.  
6 Q. You would agree, would you not, they are  
7 pretty definitive, the Surgeon General reports  
8 saying cigarette smoking does in fact cause these  
9 diseases, cancer and other diseases?  
10 A. Yes.  
11 MS. ROSENBLATT: Now we go to 33, Line  
12 21.  
13 Q. You have worked for the Tobacco Institute  
14 since 1976?  
15 A. Yes.  
16 MS. ROSENBLATT: 36, Line 5.  
17 Q. But you have no scientific information which  
18 says cigarette smoking does not cause cancer or  
19 heart disease, do you?  
20 A. I know of none.  
21 MS. ROSENBLATT: Line 15.  
22 Q. So wouldn't you concede the people who  
23 continue to smoke, in spite of being fully informed,  
24 are addicted and can't help themselves?  
25 A. I would say only they made their own  
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1 decision with respect to smoking.  
2 MS. ROSENBLATT: Page 38, Line 6.  
3 Q. What do you do at the Tobacco Institute  
4 other than respond to media inquiries in terms of  
5 your day-to-day functions and duties?  
6 A. I may be called upon to consist in preparing  
7 material to be distributed to the news media if an  
8 event is to occur in which we are a participant and  
9 we want the news media to know of it. I may respond  
10 to calls from the general public for a variety of  
11 types of information that we may have available.  
12 Also, a certain amount of reading involved every  
13 day.  
14 Q. Like what? What are you reading?  
15 A. The general newspapers, news media, to  
16 determine what stories that may involve us may be  
17 there so we can be prepared for additional calls if  
18 there are any.  
19 MS. ROSENBLATT: 39, Line 1.  
20 Q. What do you have to do with lobbyists,  
21 either at the state, local or federal level?  
22 A. Well, I know some of the people involved in  
23 dealing with state and federal issues. I frankly  
24 don't know which of them are or are not registered  
25 lobbyists.

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1 MS. ROSENBLATT: Page 40, Line 22.  
2 Q. I mean a press release. For example, when  
3 the EPA report came out condemning and talking about

4 the dangers of environmental tobacco smoke, did you  
5 simply wait for inquiries or did you in a sense  
6 counter-attack?

7 A. In that particular case, we certainly had  
8 material available which we did send to reporters  
9 who we believed were interested in this issue.

10 Q. Is there anyone in the news media at the  
11 national level who has taken the position that the  
12 tobacco industry is being unfairly dealt with and  
13 that it really hasn't been proven that cigarette  
14 smoke is all that dangerous?

15 A. I don't know of anyone.

16 Q. Is that discouraging?

17 A. Well, we provide the information and hope  
18 that we at least get a fair hearing.

19 Q. The only information you provide is that it  
20 hasn't been proven. You just keep saying that. It  
21 is not like when you say you provide the information  
22 you send them a study saying, look, here is a  
23 scientific study done at a terrific medical school  
24 which proves that cigarette smoking is safe. You  
25 never send them that kind of information?

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1 A. I know of no such study.

2 Q. Of course not. It doesn't exist, right?

3 A. I know of no such study.

4 MS. ROSENBLATT: Page 46, Line 15.

5 Q. Does the Tobacco Institute make political  
6 contributions?

7 A. Yes, I believe we do.

8 Q. Is that done through your department?

9 A. No, it is not.

10 MS. ROSENBLATT: Now Page 49, Line 15.

11 Q. From the time you first came with the  
12 Tobacco Institute, did they ever put out any kind of  
13 in-house publication? I don't necessarily mean a  
14 fancy magazine, but anything that would have gone to  
15 all the members?

16 A. Yes, I believe so.

17 Q. And what was the name of it?

18 A. The Tobacco Observer.

19 MS. ROSENBLATT: Now Page 51, Line 7.

20 Q. Is it fair to say that the tobacco industry  
21 opposes across the board any smoking ban in any  
22 public building or restaurant?

23 A. What we support is accommodating smokers and  
24 nonsmokers to the best extent possible.

25 Q. Could you answer my question now?

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1 A. And we would rather not have legislators  
2 dictating where and when it is appropriate for  
3 people to smoke. We would rather not have  
4 legislators telling people who run restaurants that  
5 they may or may not allow smoking. We believe the  
6 democracy of the marketplace can certainly take care  
7 of that.

8 Q. My question was, is it the policy of the  
9 Tobacco Institute and the tobacco industry to oppose  
10 all bans in all public buildings and restaurants?

11 It may be for the reasons you just expressed, but I  
12 didn't ask you about those reasons.  
13 A. Well, I can conceive of circumstances under  
14 which we would not oppose a ban on smoking.  
15 Q. I'm not asking you to conceive of  
16 circumstances. I'm asking you as a practical  
17 matter, since you have been with the Tobacco  
18 Institute, is it not true it has been the policy of  
19 the Tobacco Institute to across the board oppose any  
20 proposed smoking ban in any public building or  
21 restaurant?  
22 A. I believe that is true.  
23 MS. ROSENBLATT: Page 56, Line 8.  
24 MR. ROSENBLATT: I'm sorry. What page?  
25 MS. ROSENBLATT: 56.

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1 Q. What is tar?  
2 A. What is tar?  
3 Q. Tar. Is that a term you are familiar with?  
4 A. I am. It is a condensate measured after a  
5 machine smoking method, the product of incomplete  
6 combustion. It is measured in milligrams.  
7 Q. What does that mean, condensate?  
8 A. It is the product of the incomplete  
9 combustion of the cigarette.  
10 Q. Why do so many cigarette advertisements  
11 stress low tar? What is the difference between low  
12 tar and high tar? Who cares?  
13 A. The low tar cigarettes are generally those  
14 that are below 15 milligrams yield per cigarette.  
15 Q. But what does that mean to the well-informed  
16 consumer you keep talking about, this well-informed  
17 guy who sees this brand has 14 milligrams tar, this  
18 brand has six milligrams tar? What is the  
19 difference to this well-informed consumer?  
20 A. I don't know what the difference might be.  
21 MS. ROSENBLATT: 58, Line 17, starting  
22 with "Based."  
23 Q. Based on your experience in the tobacco  
24 industry, when you see an ad that says low tar,  
25 lower, lowest tar, stressing the lowness of the  
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1 milligrams of tar, did it ever occur to you the  
2 reason for that kind of stress in an advertisement  
3 is to make the consumer believe that by getting a  
4 low tar, low nicotine cigarette, he is buying a less  
5 dangerous cigarette, or did that never occur to you?  
6 A. I don't know what it means, Mr. Rosenblatt.  
7 Q. How is the well-informed consumer that you  
8 keep talking about supposed to know if you, who has  
9 worked for the Tobacco Institute, doesn't know?  
10 Really. How is this well-informed consumer out  
11 there supposed to know what low tar means if you  
12 don't know what low tar means?  
13 A. I can't answer that question.  
14 MS. ROSENBLATT: 64, Line 13.  
15 Q. Do you personally ever have occasion to  
16 testify before congressional committees?  
17 A. I think I have done so once.

18 Q. Who usually does the testifying from the  
19 Tobacco Institute?  
20 A. I believe Charlie Whitley usually does the  
21 testimony.  
22 Q. He is the former congressman from North  
23 Carolina?  
24 A. He is a former congressman from North  
25 Carolina.

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1 Q. So he goes up on the hill and testifies  
2 quite frequently?  
3 A. He has.  
4 Q. Is he a full-time employee of the Tobacco  
5 Institute, Mr. Whitley?  
6 A. I don't believe he is an employee, no.  
7 Q. Who is he?  
8 A. He is a consultant.  
9 Q. His office is right there, isn't it, at the  
10 Tobacco Institute?  
11 A. He does have an office assigned to him in  
12 the Tobacco Institute, yes.  
13 MS. ROSENBLATT: Next page.  
14 Q. I'm showing you something called the Tobacco  
15 Institute Scope and Activities. It's a copy. I ask  
16 you if you have ever seen that before?  
17 My understanding is it is a copy of a  
18 brochure that the Tobacco Institute put out.  
19 A. Yes. It appears to be.  
20 Q. You have seen that before?  
21 A. I believe I have.  
22 Q. Did you write this or any part of it?  
23 A. No.  
24 Q. Would you know who did?  
25 A. No, I do not.

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1 Q. Do you know what the purpose of this was? I  
2 mean, it looks to me like it would be intended maybe  
3 for the general public. I don't know.  
4 A. I believe it is, yes.  
5 Q. And as a practical matter, how did this get  
6 to the general public? Was this only given to  
7 people who called and had inquiries, or was this  
8 disseminated on some wider basis?  
9 A. I don't know of any wide dissemination that  
10 was ever given. Personally, I would give it to  
11 someone who asked what the mission of the institute  
12 is.  
13 Q. Is this still in existence? Do you still  
14 have this now, this brochure?  
15 A. Either that or a version of it.  
16 Q. You mention you are involved with issues  
17 involving environmental tobacco smoke and its role  
18 in indoor air quality.  
19 The institute is a communicator of  
20 information and viewpoints on these and other  
21 matters to the public, the news media and government  
22 on local, state and national levels.  
23 What do you tell people that call up and ask  
24 you about environmental tobacco smoke?

25 A. I would respond to specific questions.  
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1 Q. How would you respond to this question?

2 I'm a nonsmoker, I'm working in a place  
3 where everyone is smoking and I don't like it, and I  
4 think it is bad for my health. Is it?

5 A. I don't know if it is or not, but I think in  
6 any indoor environment, there are a wide variety of  
7 things which might contribute to the quality of the  
8 air, and that environmental, tobacco smoke might be  
9 one of them.

10 Q. Obviously, you really have no solution for a  
11 person with that kind of inquiry?

12 A. I don't have any specific solution to offer,  
13 no, I don't.

14 Q. The brochure says policy direction is given  
15 to the institute by a board of directors consisting  
16 of executives of its member companies.

17 That is what is decided at these executive  
18 meetings, the general overall policy of the Tobacco  
19 Institute; is that correct?

20 A. Well, I suppose so. I have never attended a  
21 meeting, so I really couldn't be specific.

22 Q. The brochure mentions that the activities of  
23 the Tobacco Institute are principally conducted in  
24 Washington, D.C., headquartered by a professional  
25 staff whose members have background in government

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1 journalism, law, education, business, economics and  
2 other fields.

3 Who is the professional staff that has a  
4 background in law? Do you have anyone there now in  
5 that category or immediately before the changes?

6 A. I don't know the backgrounds of each  
7 individual employee, present or past.

8 Q. What is the president's background? Is he a  
9 lawyer?

10 A. I don't believe he is.

11 Q. What is his background, area of expertise,  
12 if you know?

13 A. Prior to coming to the Tobacco Institute, he  
14 was for a number of years--and I don't recall how  
15 many--with the Distilled Spirits Council of the  
16 United States.

17 Q. Is that a trade association for the liquor  
18 industry?

19 A. It is a trade association, as I understand  
20 it, for the companies that make and distribute  
21 distilled spirits.

22 MS. ROSENBLATT: Page 71, Line 8.

23 Q. What was your role during the period of time  
24 when it was proposed that smoking be banned on  
25 airplanes, domestic flights?

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1 A. I responded to inquiries from reporters for  
2 interviews, for information, for background. We  
3 received also a great many calls from the general

4 public who were angry that there was a proposal to  
5 ban smoking on airplanes.

6 Q. What did you tell them?

7 A. One of the things we told them was that we  
8 thought there were good reasons not to proceed with  
9 such legislation and we were presenting that  
10 information to Congress.

11 Q. What were the good reasons not to proceed  
12 with that legislation?

13 A. For example, the evidence being cited by  
14 some to support a ban did not establish that  
15 environmental tobacco smoke was a cause of disease  
16 in nonsmokers.

17 We felt, based on studies that had been done  
18 on aircraft, that there were certain things having  
19 to do with ventilation of aircraft that needed  
20 attention and weren't being addressed by this  
21 legislation.

22 Any additional things, I would have to look  
23 at the files to see exactly what we were saying at  
24 that time.

25 Q. What files are you referring to?

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1 A. Press releases we may have issued. Any  
2 summaries of the scientific information as it  
3 existed at the time.

4 Q. Did you ever read the EPA report?

5 A. Of this year?

6 Q. Well, the EPA report that got all the  
7 publicity and attention condemning environmental  
8 tobacco smoke as a carcinogen.

9 A. I believe you are talking about the one  
10 issued in January of this year.

11 Q. Correct.

12 A. I did not read that report.

13 Q. Why not? I mean, wouldn't you have thought  
14 by reading it you might be in a better position to  
15 answer questions having to do with that issue?

16 A. It was an extremely technical document and I  
17 did not feel that I could read it and fully  
18 understand the issue because of its technical  
19 complexity.

20 Q. But you never attempted to read it?

21 A. I made an attempt, but quickly saw that it  
22 was not something that I would be able to fully  
23 understand.

24 MS. ROSENBLATT: You would continue  
25 that on Line 10.

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1 Q. Did you have access to anyone or did you try  
2 to get some person with a more technical background  
3 connected with the tobacco industry to put it in a  
4 more understandable form for you?

5 A. We, as I understand it, had contact with  
6 scientific consultants who had been following the  
7 issue and who were very well acquainted with the  
8 material that was in the report.

9 Almost all of it was a matter of public  
10 knowledge in advance anyway, because so much had

11 been published in the scientific literature and  
12 these consultants were monitoring the literature and  
13 telling us what it said and pointing out some of the  
14 inconsistencies and the flaws, and they did the same  
15 with respect to the report itself.

16 MS. ROSENBLATT: Line 25.

17 Q. Can you name any of these consultants?

18 A. Right off the top of my head, no. I would  
19 have to look and see if I have any of their names.

20 MS. ROSENBLATT: Let me see I think the  
21 next is 90. Page 90, Line 23.

22 Q. You are quoted in the Washington Post back  
23 in April of 1998 as saying if we are attacked, we  
24 are not going to roll over and play dead.

25 MR. RUSS: 1988. I think you said '89.

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1 Q. You were quoted in the Washington Post back  
2 in April of 1988 as saying, "If we are attacked, we  
3 are not going to roll over and play dead. As soon  
4 as our adversaries learn that, the less difficulty  
5 they are going to find themselves in," end quote.  
6 What did you mean by that?

7 I handed the witness the article. You are  
8 reading that Washington Post article where that  
9 quote I read to you is contained.

10 Okay. You have read the article. You  
11 remember my question?

12 A. Would you restate it?

13 Q. Yes. You were quoted as saying, "If we are  
14 attacked, we are not going to roll over and play  
15 dead, the sooner our adversaries learn that, the  
16 less difficulty they are going to find themselves  
17 in."

18 My question is, what did you mean by that?

19 A. That we were certainly going to vigorously  
20 defend our industry, and we certainly were not going  
21 to allow our adversaries to win any issue without  
22 opposition.

23 Q. Who are your adversaries? Your adversaries  
24 are all those people that are convinced that  
25 cigarette smoking causes cancer, heart disease,

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1 emphysema and other diseases? Those are your  
2 adversaries, right?

3 A. Depends on the forum. Our adversaries may  
4 be political or they may be antismoking  
5 organizations. It depends on the issue.

6 MS. ROSENBLATT: I think that's it.  
7 That's the end of the deposition. You wanted to go  
8 home? All right. It's Friday afternoon. You've  
9 put in a good day, folks. Let's see. How did we  
10 figure this thing out.

11 MR. ROSS: Tuesday.

12 THE COURT: Tuesday, because we have to  
13 take Monday to get ready for Tuesday. So we are  
14 going to be working all day on Monday. So rather  
15 than have you folks come in and out, we'll let you  
16 folks come in Tuesday so we can get a lot of stuff  
17 done. Good home. Enjoy the weekend. Do not watch

18 TV or read newspapers or talk about this case.  
19 (The jury exited the courtroom and the  
20 following proceedings were had:)  
21 THE COURT: Have a seat, folks. Now,  
22 let's see if we can finish up. I went through  
23 Chilcote, so I guess I have to give you some  
24 designations on that.  
25 MS. ROSENBLATT: Right. Great. At  
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1 least get that one out of the way.  
2 MS. ROSENBLATT: Okay.  
3 MS. LUTHER: If we are not involved in  
4 that, Your Honor, may we be excused?  
5 THE COURT: Yes, ma'am.  
6 Okay are you ready with me?  
7 MS. ROSENBLATT: Yes.  
8 THE COURT: Page 12, Line 25; Page  
9 13---  
10 MR. ROSS: I'm sorry. You got ahead of  
11 me.  
12 THE COURT: No. This is one in the  
13 whiskey business. That's okay. I don't care about  
14 the whiskey business. That's okay.  
15 MR. ROSS: So that's in or out?  
16 THE COURT: That's in.  
17 MR. ROSENBLATT: Judge Cohen is  
18 studying your videos here.  
19 THE COURT: Oh, God, I hope he doesn't.  
20 That's the only trouble with high profile.  
21 Everybody is looking at you like you're in a zoo.  
22 MS. ROSENBLATT: Try not to think about  
23 it.  
24 THE COURT: To tell you the truth, I  
25 don't. And I really forget that there's a camera in  
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1 the courtroom and all, and so the demeanor is  
2 different. I'm just me and that's it. I can't do  
3 anything about it.  
4 There's a lot of stuff here, Page 17 and 18,  
5 which is background, but nothing really serious.  
6 Line 20, Page 20, that is.  
7 MR. ROSS: I'm sorry. 17 is out?  
8 THE COURT: No. I mean, one way or the  
9 other, it depends on how you look at it. It's just  
10 his background and moving. It's a career move.  
11 MR. ROSS: I agree. I was just trying  
12 to shorten it.  
13 THE COURT: I realize that, but,  
14 whatever.  
15 Page 20, Line 10 through 25 is out.  
16 MS. ROSENBLATT: Excuse me. I didn't  
17 hear. 10 through 25?  
18 THE COURT: Page 20, Line 10 through  
19 25. That's money. We did that with the others.  
20 And Line 21 through 13--no--through 10, 11,  
21 12 is okay.  
22 MR. ROSS: I did miss one objection  
23 that I wanted to give you when we get to Page 29.  
24 THE COURT: 29.



1 THE COURT: I'm on 29 now.

2 MR. ROSS: I did mean--I don't know if  
3 it was marked on yours. It's marked wrong on my  
4 copy. I did mean to object to Lines 3 to 14.

5 THE COURT: What?

6 MR. ROSS: 3 to 14.

7 THE COURT: "Have you ever read the EPA  
8 report?"

9 "No, sir."

10 MR. ROSS: I thought we had this  
11 question.

12 MS. ROSENBLATT: Well, this was the  
13 president, a different person.

14 MR. ROSS: I know. They ask every  
15 different person in the Tobacco Institute.

16 THE COURT: It's important that he read  
17 it, and if it comes up as to yes, he should have  
18 read it, then it becomes relevant.

19 MR. ROSS: I don't know why it is  
20 important that he read it.

21 MS. ROSENBLATT: Well, they are stating  
22 positions on it and answering questions on  
23 secondhand smoke.

24 THE COURT: That's what I'm saying.

25 MR. ROSS: I don't think you're going

1 to find that this person did, but.

2 THE COURT: Okay. Leave it in.

3 MR. ROSS: Okay.

4 THE COURT: Now 33.

5 MS. ROSENBLATT: Yes.

6 THE COURT: Line 6 and 7 and 8 contains  
7 surplusage. I cut out on Line 6, for example, "Or  
8 there was an order of court, you got a call from  
9 your lawyer saying," and it should read, "If I said  
10 to you we want to see every press release."

11 MS. ROSENBLATT: Okay.

12 THE COURT: That makes more sense.

13 MS. ROSENBLATT: Okay.

14 THE COURT: Let's see where we go.

15 MR. ROSS: If I might make a  
16 suggestion. I didn't state an objection at the time  
17 because I didn't know how many of these were going  
18 to get read, but if you look at Page 34, do we  
19 really need to ask the fourth straight person where  
20 do meetings take place and how many meetings a year  
21 do they have? We read that to the jury four times.

22 THE COURT: I mean, you can understand  
23 that when they depositions are given, you don't have  
24 all the information and it becomes a problem.

25 MR. ROSS: I didn't know which order we

1 were going to do them in, but I suggest we take that  
2 out because I think every single one of the three  
3 previous people said the meetings take place a

4 Washington.  
5 MS. ROSENBLATT: There were two prior  
6 people. We didn't have Lauria.  
7 MR. ROSS: We had Kornegay.  
8 MS. ROSENBLATT: You're right.  
9 THE COURT: The point is, if it's  
10 repetitious and relevant and substantive, all those  
11 three, then it makes a difference. If it isn't---  
12 MR. ROSS: I'm not saying it's  
13 prejudicial. If they want it in, no problem.  
14 THE COURT: Let's keep going with it.  
15 We spend more time talking about it.  
16 Page 41, Line 20 through 25. The whole page  
17 of 42. And Line 1 and 2, I guess of 43.  
18 I'm on 53. We talk here about budget.  
19 MS. ROSENBLATT: I think that's  
20 relevant since they are in the communication  
21 business and communicating the position of the  
22 tobacco industry. This has nothing to do with the  
23 value of the tobacco companies or market share or  
24 anything like that.  
25 MR. ROSS: Well, they are also a  
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1 defendant in this case and it's not relevant to  
2 anything other than the size of the Tobacco  
3 Institute.  
4 MS. ROSENBLATT: Well, it's a  
5 not-for-profit type I think corporation. I mean,  
6 they are not--their budget from the tobacco  
7 companies in terms of communicating to the public  
8 and their position. I think it's relevant  
9 information.  
10 MR. ROSS: You'll see on the next page  
11 they're talking about rents, the computers, the  
12 overhead.  
13 THE COURT: Let's see.  
14 MS. ROSENBLATT: Just explains how it  
15 functions. I mean, not everyone is familiar. I  
16 certainly wasn't with what a trade association does  
17 and how it functions.  
18 MR. ROSS: I think we have now  
19 explained that two or three times to the jury. I  
20 don't think we need to know the total budgetary  
21 operation of \$38 million and how much went for  
22 computers and how much went for employee benefits.  
23 MS. ROSENBLATT: I don't see how it's  
24 prejudicial. I think it's relevant.  
25 MR. ROSS: It's prejudicial. It's  
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1 talking about the size of R.J. Reynolds Tobacco  
2 Company.  
3 THE COURT: It says how much money was  
4 spent in promotion, I guess.  
5 MS. ROSENBLATT: It's like the Council  
6 for Tobacco Research. They, themselves, have put  
7 in, and I believe the Brown & Williamson CEO, Nick  
8 Brookes, talked about it would be eight hundred  
9 million dollars in today's money what we have spent  
10 on research. This is what they are spending on, you

11 know, communicating to the public and this is the  
12 trade association organizations. It's similar.  
13 THE COURT: Well, they break it down  
14 here.  
15 MS. ROSENBLATT: It's a paragraph or  
16 two. It's certainly not in any way prejudicial to  
17 them.  
18 MR. ROSS: I disagree. We are a  
19 defendant. We are being sued for punitive damages,  
20 so to show our total budget is \$38 million, it talks  
21 about the worth of this defendant.  
22 MS. ROSENBLATT: How about them saying  
23 they spent eight hundred million? They wanted to do  
24 that for the Council for Tobacco Research.  
25 MR. ROSS: I'm not the Council for  
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1 Tobacco Research. Since we haven't put our case on,  
2 I don't think we volunteered anything.  
3 MS. ROSENBLATT: The other defendants  
4 have volunteered the fact that how much is spent on  
5 that.  
6 THE COURT: This doesn't answer the  
7 question, really, as to how much is spent in the  
8 actual promotion.  
9 MR. ROSS: No, it doesn't. It's the  
10 total budget of the operation.  
11 THE COURT: I'll leave it out.  
12 MS. ROSENBLATT: Well, it explains it  
13 on the next page, I think.  
14 THE COURT: Not really.  
15 MS. ROSENBLATT: Public affairs, 13  
16 million. That public affairs is what they're doing  
17 in terms of promotion.  
18 MR. ROSS: Public affairs could  
19 encompass almost anything.  
20 THE COURT: The business of TI is --  
21 MR. ROSS: For the trade association.  
22 THE COURT: What does that mean?  
23 MR. ROSS: It means, as the other  
24 witnesses have explained, we present, when asked,  
25 the industry's position on issues like excise taxes.  
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1 THE COURT: Public relations,  
2 communications?  
3 MR. ROSS: Public relations,  
4 communications, yep.  
5 THE COURT: For that purpose. Okay.  
6 Well, in that regard, I'll go ahead and  
7 leave it in, then. I think it boils down to about  
8 13 million for public affairs. Okay.  
9 MR. ROSS: Most of that has nothing to  
10 do with smoking and health. That's the problem.  
11 They deal with federal excise taxes.  
12 THE COURT: They promote the industry's  
13 position, is what she said.  
14 MR. ROSS: Right. But as some of the  
15 witnesses have said, rarely is it smoking and  
16 health. They spend a lot of time on federal excise  
17 taxes than on anything else. They spend far more

18 time on that than they ever do smoking and health  
19 issues.  
20 THE COURT: I think she mentioned that.  
21 All right. 16 through 22, political  
22 contributions.  
23 MS. ROSENBLATT: Just explains that  
24 they have a PAC.  
25 THE COURT: They have a PAC.  
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1 MS. ROSENBLATT: Which is something  
2 that not everyone is aware of. That's what trade  
3 associations have. It's not prejudicial to them; it  
4 just states how that functions.  
5 MR. ROSS: I also suggest it's also  
6 irrelevant to the case.  
7 THE COURT: I can't hardly hear you.  
8 MR. ROSS: It's irrelevant to the case.  
9 So why are we putting it in?  
10 THE COURT: A lot of this is irrelevant  
11 to the case.  
12 MR. ROSS: Amen.  
13 THE COURT: I don't know.  
14 MR. ROSS: Puts it back before the  
15 jury, again, suggests -- leaves some sort of  
16 inference. I don't know the reason why they're  
17 putting it in. There's something wrong with this.  
18 Or to use the expression they were using the other  
19 day --  
20 THE COURT: I'm not exactly sure where  
21 they're going to go with it, what argument. But if  
22 there's some argument they can make for it, I  
23 suppose as to -- that's relevant. How much they  
24 could have spent, should have spent, would have  
25 spent or whatever, or spending all the money in  
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1 doing something that was not what they were supposed  
2 to do, I don't know.  
3 MR. WHITING: Your Honor, how can he  
4 make that argument without the evidence?  
5 THE COURT: That's what I'm waiting  
6 for, to see what happens here.  
7 MR. ROSS: There is none, in this  
8 deposition or any of the other three that we've  
9 already had from the TI.  
10 MS. ROSENBLATT: I don't agree with  
11 that interpretation.  
12 THE COURT: Well, of course you don't  
13 agree with it, but the question is, where's the  
14 beef?  
15 MS. ROSENBLATT: When you see all the  
16 documents -- whether there's this much, with the  
17 tobacco, that they themselves have produced,  
18 propaganda, total lies, there being no proof,  
19 everything is harmless.  
20 Secondhand smoke is harmless, in terms of  
21 what they are providing to the government, to the  
22 public, to smokers, to nonsmokers; what they are  
23 publishing in newspapers, magazines; a media blitz  
24 of basically misleading and misstatements, including

25 to Congress. I mean, that's where -- I think that's  
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1 relevant.

2 THE COURT: You think that's where this  
3 money is being spent?

4 MS. ROSENBLATT: Yes.

5 MR. ROSS: Now we are talking about  
6 political contributions, through a PAC. What does  
7 that have to do with anything she just said?

8 THE COURT: I agree.

9 MS. ROSENBLATT: That's part of --

10 THE COURT: 16 through 22 is out, as  
11 well as 17 through 25 of the next page, 55. And 56,  
12 1 through 6.

13 MS. ROSENBLATT: Okay. So 16 to 22 is  
14 out.

15 MR. MARTINEZ: I'm leaving on a high  
16 note. We won something. I'm out of here.

17 MS. ROSENBLATT: Always the jokester.

18 MR. ROSS: I think that would include  
19 57 also, 2 through 9.

20 THE COURT: I don't want to get into  
21 areas of -- 58, 6, 7, 8, is out.

22 60, now he's telling us about all he knows,  
23 social friends with everybody in Congress.

24 MS. ROSENBLATT: Well, that explains  
25 his position as president and what he's doing and

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1 what's going on.

2 MR. ROSS: The fact that he plays golf  
3 with three U.S. senators, that's relevant?

4 THE COURT: Well, the question is:  
5 What do they talk about when they play golf?

6 MR. ROSS: There isn't anything here  
7 about what they talk about on the golf course.

8 MS. ROSENBLATT: I'm sure secondhand  
9 smoke.

10 MR. ROSS: While they're playing golf.

11 MS. ROSENBLATT: If it's so innocuous,  
12 there is no prejudice or harm.

13 THE COURT: The question is: Is he  
14 using his relationship to influence Congress?  
15 That's the point.

16 MR. ROSS: And there's nothing here to  
17 that effect.

18 THE COURT: Well, playing golf with a  
19 congressman is better than you and I can do. Well,  
20 I don't know about you.

21 MR. ROSS: My playing golf with anybody  
22 is probably --

23 THE COURT: Well, further on down, is  
24 this the one that knows all the presidents?

25 MR. ROSS: He doesn't know as -- that

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1 was Kornegay. Kornegay knew more. This guy knows a  
2 few, I think.

3 MS. ROSENBLATT: I don't see where

4 there's any -- this is just relationships.  
5 THE COURT: Okay. It's really of no  
6 relevancy to what we are talking about, if you don't  
7 follow up on it. It wasn't followed up.  
8 MS. ROSENBLATT: I think it's in the  
9 realm of what his position is.  
10 THE COURT: He's a big shot.  
11 MS. ROSENBLATT: It's not a coincidence  
12 that the people that are running these organizations  
13 are very involved.  
14 THE COURT: But you have to show a  
15 nexus, and there isn't any, other than maybe he's a  
16 better golfer. I don't know.  
17 MS. ROSENBLATT: Well, the relationship  
18 with congressmen and the situation and what exists.  
19 THE COURT: No, I'm going to leave it  
20 all out. 57, 61 -- I mean 60 and 61. We get down  
21 to the nuts and bolts here.  
22 MR. ROSS: I think the next objection  
23 was 68. Because at this point it's totally  
24 cumulative.  
25 MS. ROSENBLATT: Well, he's the  
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1 president.  
2 THE COURT: No, he's the big shot.  
3 MR. ROSS: Then we shouldn't have them  
4 asking the last three people, because it's the same  
5 question.  
6 THE COURT: He likes to play golf with  
7 Bob Sheaffer, of the media.  
8 MR. ROSS: Yeah, of CBS.  
9 THE COURT: So 9 through 15.  
10 MS. ROSENBLATT: Where are we now?  
11 THE COURT: 72. Yeah, he talks to the  
12 president.  
13 MS. ROSENBLATT: So you are taking out  
14 9 through 19.  
15 MR. ROSS: That's on 72?  
16 THE COURT: Yeah. Back on 73 now.  
17 Have you met President Clinton? Yes, sir. So  
18 forth, so on. Actually knows the President. What  
19 has that got to do with anything?  
20 MR. ROSS: He actually says he knew him  
21 when he was Governor.  
22 THE COURT: Yeah, he knew Bush.  
23 MS. ROSENBLATT: Well, he went to  
24 Bush's wedding.  
25 THE COURT: He does answer: Part of my  
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1 job I guess here in Washington is to know different  
2 people.  
3 MS. ROSENBLATT: That's why the earlier  
4 questions should really be in. That's part of what  
5 he's doing. That is part. I had forgot that he had  
6 said that.  
7 MR. ROSS: He then goes on to say he  
8 went to President Bush's daughter's wedding because  
9 he was a life-time friend of the young man who was  
10 marrying President Bush's daughter; not because

11 President Bush invited him.  
12 THE COURT: What an in for influence.  
13 MR. ROSS: Yeah, what an influence.  
14 THE COURT: No, what an in for  
15 influence.  
16 MR. ROSENBLATT: And you put this  
17 together, Judge. Kornegay quit Congress, he wanted  
18 to go back to Greensboro. 25 years later, he goes  
19 back to Greensboro because -- he wants to leave  
20 Washington because he gives all these family  
21 reasons.  
22 THE COURT: So let's talk about all  
23 that. He's a real big shot, knows all these  
24 presidents. He can work his way around through  
25 Washington and all the cocktail parties and  
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1 everything. The next question is: So what?  
2 MS. ROSENBLATT: We're going to get you  
3 a T-shirt, "So what." We were talking about it.  
4 MR. ROSENBLATT: The "so what" is  
5 people can draw reasonable inference from that.  
6 THE COURT: Reasonable inference of  
7 what, lobbying?  
8 MS. ROSENBLATT: That's part of his job  
9 responsibilities, part of what he's expected to  
10 do --  
11 MR. ROSENBLATT: Clout.  
12 MS. ROSENBLATT: -- to have these  
13 relationships. That's part of the reason why it is  
14 so difficult and it takes so long for, you know,  
15 things to happen. That's part of how they  
16 communicate.  
17 MR. ROSS: Then that's my problem.  
18 They want to try to draw that inference.  
19 MR. WHITING: How does that connect to  
20 any breach of any legal duty?  
21 THE COURT: I agree. When you talk  
22 about where this case is going, that's a real  
23 stretch.  
24 It's nice to be able to talk to people about  
25 it, but -- so we're out from 73, Line 25 through 74,  
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1 to Line 18, or 17, and 75 through 25. 76, 1 through  
2 13, and 14 through 16. Okay.  
3 MS. ROSENBLATT: Now where are we?  
4 We're on 76?  
5 THE COURT: Now we're on 77.  
6 MS. ROSENBLATT: Well, Line 17.  
7 THE COURT: No, that's all right.  
8 MS. ROSENBLATT: Page 76 is in, so  
9 that's in?  
10 MR. ROSS: Yeah, he didn't take that.  
11 THE COURT: Now -- tenuous.  
12 MS. ROSENBLATT: Well, I think it's  
13 perfectly appropriate to ask him, you mean Line 3,  
14 the question. He wouldn't as president keep someone  
15 if they didn't say --  
16 THE COURT: Toe the line.  
17 MS. ROSENBLATT: Yeah, I think that's

18 appropriate to ask.  
19 THE COURT: I left it in. I didn't  
20 take it out.  
21 MR. ROSS: This is the tobacco industry  
22 trade association. That is their job.  
23 THE COURT: To do what?  
24 MR. ROSENBLATT: To lie to the American  
25 people?

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1 THE COURT: To play golf with the  
2 President?  
3 MR. ROSS: No, to state the industry's  
4 position. That's what a trade association does.  
5 THE COURT: But if you state your own  
6 position, your personal position, and not the  
7 industry's position, the question is: Would he be  
8 fired?  
9 MR. ROSS: Because he wouldn't be doing  
10 his job.  
11 THE COURT: Then he would be fired.  
12 That's what he said.  
13 MR. ROSS: I don't know what the  
14 relevance is of that.  
15 THE COURT: The relevance is, they make  
16 him toe the line. He sees the relevance.  
17 MR. ROSENBLATT: He sees the relevance,  
18 Judge. Have not you caught on? Anything that  
19 hurts, he says he doesn't see the relevance.  
20 THE COURT: All right. Where are we  
21 at?  
22 MS. ROSENBLATT: Near the end, I hope.  
23 THE COURT: I, for some reason,  
24 bracketed Line 24 through Page 78, Line 11, because  
25 I think --

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1 MR. ROSS: Yeah, he rephrased it.  
2 THE COURT: He rephrases it. That's  
3 what it is. Yeah.  
4 MR. ROSS: The question is withdrawn,  
5 and there was never an answer.  
6 THE COURT: So comes in on Page 78,  
7 Line 18.  
8 MR. ROSS: Right.  
9 MS. ROSENBLATT: He said, I'll be happy  
10 to rephrase it.  
11 THE COURT: Yeah. Now we get to the  
12 liquor business, Page 80, Line 25, and alcoholism --  
13 I don't think that's any part of this case. So I  
14 took out 1 through 9 on Page 81.  
15 We get to Page 9 -- talking about Tom Lauria  
16 and that article. I left that in. Except to Page  
17 80, Line 18 through 25 --  
18 MS. ROSENBLATT: Up through where?  
19 THE COURT: Up through Line 24. I'm  
20 sorry, Line 24.  
21 MR. ROSS: 18 through 24 on 91, that's  
22 out?  
23 THE COURT: Yeah, that's out.  
24 MS. ROSENBLATT: That's out on 18



25 through 24.  
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1 THE COURT: Yeah, that's out.  
2 And the next question, 24 -- 25, and 92,  
3 Line 1 through 7 is out also.  
4 MS. ROSENBLATT: That's 92, 1 through 7  
5 is out?  
6 THE COURT: Yeah.  
7 99, let me start talking about everybody's  
8 salary range. All that's out. Page 99, top of 100.  
9 102, really repetitious.  
10 MS. ROSENBLATT: Okay. We can take  
11 that out.  
12 THE COURT: 5 through 15.  
13 MS. ROSENBLATT: Okay.  
14 THE COURT: 103, the wonderful  
15 hypothets. 15 through 25 is out.  
16 104, 1 through 8 is out. Now we're talking  
17 about 105, and we were talking about this tar --  
18 MR. ROSS: Yes, repetitive.  
19 THE COURT: Yes, it is repetitive.  
20 I've marked it out because we've been through that  
21 before. 21 through 25, that's the same old  
22 question, which is out. I think that may be it.  
23 No, there's one more here. Oh, no. Same  
24 question on 113 and 114.  
25 MR. ROSS: Tried it again at the end.

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1 THE COURT: Okay. For whatever value  
2 it has.  
3 MR. ROSS: All right.  
4 THE COURT: All right.  
5 So what's next?  
6 MR. ROSS: I think that's it. That's  
7 all the TI people.  
8 MR. ROSENBLATT: Could you reconsider  
9 playing golf with the President?  
10 MS. ROSENBLATT: That's part of his  
11 job.  
12 THE COURT: Only if he doesn't cheat.  
13 MR. ROSENBLATT: You know, that's such  
14 access. That's such clout. President with --  
15 everyone knows --  
16 MR. ROSS: Hold it. He didn't play  
17 golf with the President. A couple senators. You  
18 got the wrong people.  
19 MR. ROSENBLATT: Well, it was Senator  
20 Clements, who actually made the job offer, you'll  
21 remember, to Kornegay. Isn't this an incestuous  
22 thing?  
23 THE COURT: Clout to do what?  
24 MR. ROSENBLATT: To have access. It  
25 doesn't cause -- you know, hey, doesn't cause

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1 anything, doesn't cause anything. That's worth a  
2 lot.  
3 MS. ROSENBLATT: Promulgate --

4 MR. ROSS: Just as the senator was  
5 putting, he whispered in his ear.  
6 THE COURT: If you want to get into the  
7 conversation they said about listening, I won't tell  
8 them that you're really only lying for --  
9 MS. ROSENBLATT: Reality of those  
10 relationships know more than.  
11 THE COURT: But it's supposition, you  
12 know. This is where the problem is.  
13 MS. ROSENBLATT: But it's part of their  
14 job. It really is part of his job where he actually  
15 said it.  
16 THE COURT: To butter up the  
17 higher-ups?  
18 MS. ROSENBLATT: To cultivate the  
19 relationships.  
20 THE COURT: Unless you can show the  
21 nexus, what he got out of it, I don't have anything.  
22 If you can show that because he did that,  
23 they passed this legislation or didn't pass the  
24 legislation, or did something that would favor the  
25 tobacco industry, that you can definitively say it  
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1 happened, different story. But you can't.  
2 MR. ROSS: We ought to bring you guys  
3 T-shirts that say "never give up."  
4 THE COURT: Let's put it this way. I  
5 once met President Kennedy, and I had cocktails with  
6 Dean Russert. Now you want to make something out of  
7 that? Is there an inference to that?  
8 MR. ROSS: So you were responsible  
9 for --  
10 MS. ROSENBLATT: But you were probably  
11 a state attorney that was legitimately doing his  
12 job.  
13 THE COURT: No, I was a newscaster at  
14 the time, a news reporter.  
15 MR. ROSENBLATT: You didn't want  
16 anything?  
17 THE COURT: I wanted a story, which I  
18 didn't get.  
19 MR. MOODHE: Your Honor, before you  
20 leave, I know you are taking home the Booberg  
21 deposition over the weekend.  
22 THE COURT: Who is Booberg?  
23 MR. ROSENBLATT: American Thoracic  
24 Society.  
25 MR. MOODHE: The fellow I talked about  
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1 yesterday.  
2 MS. ROSENBLATT: We can argue that  
3 Monday. I have -- we have the objections and --  
4 MR. MOODHE: I wanted to remind Your  
5 Honor that after you had so laboriously and  
6 tediously pruned today, you have an opportunity to  
7 bring out the power tool with Carl Booberg. He  
8 shouldn't testify at all for reasons that I reminded  
9 Your Honor, and --  
10 THE COURT: I don't know, that's your

11 position.  
12 MR. MOODHE: If you were going to look  
13 at it over the weekend, I wanted to ask you perhaps  
14 first to look at a portion of the transcript that  
15 might save you a great deal of time and trouble.  
16 THE COURT: Which portion?  
17 MR. MOODHE: Booberg. If you are not  
18 looking at it over the weekend, I won't trouble you.  
19 MS. ROSENBLATT: My suggestion would  
20 be, have a peaceful weekend. It will be a long day  
21 Monday.  
22 MR. SCHNEIDER: I saw you put Johnson  
23 in there. That's Booberg. (Handing)  
24 THE COURT: I already read it. It's  
25 speed reading. All right. I'll look at it and see  
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1 what's in there.  
2 MR. MOODHE: If you are going to look  
3 at it, Your Honor, if you could focus on just five  
4 or six pages, I think you'll see what I'm talking  
5 about.  
6 THE COURT: Are they in sequence?  
7 MR. MOODHE: Pages 69 through 77 and  
8 Page 86.  
9 THE COURT: Let me mark it.  
10 MS. ROSENBLATT: I've outlined it.  
11 There are other pages that present clearly our point  
12 of view, you know. My suggestion is we just go over  
13 it, you know, Monday. We have all day.  
14 THE COURT: It's too long to go over.  
15 No, I want to get familiar with it. It's a lot  
16 easier if I -- I may not. I may decide the heck  
17 with it. But if I have nothing better to do and the  
18 ballgame isn't any good -- and you said --  
19 MR. MOODHE: 69 through 77, and Page  
20 86.  
21 THE COURT: All right. Is that an  
22 undue influence on this thing so I won't read  
23 theirs?  
24 Which ones do you want me to read? Any  
25 special page you want me to --  
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1 MR. ROSENBLATT: We wouldn't have the  
2 nerve to ask you to focus in on a few particular  
3 pages which help us.  
4 MS. ROSENBLATT: We'll argue it Monday.  
5 We've got positions that --  
6 THE COURT: Let me tell you something.  
7 What are we going to do with the six alternates when  
8 they find out that they're alternates, and they may  
9 not have to decide this case? I think there will be  
10 a rebellion.  
11 MR. ROSS: I'm leaving the courtroom  
12 before you tell them.  
13 THE COURT: I really had been under the  
14 impression we would lose a few along the line  
15 because of the length. So far they have been happy  
16 as a pig in mud.  
17 MR. ROSENBLATT: This is a fascinating

18 case. That's why they're happy. They know they are  
19 on something very significant.  
20 MS. ROSENBLATT: Maybe we could  
21 stipulate to have the whole panel as a jury.  
22 THE COURT: We could have a 12-person  
23 jury.  
24 MS. ROSENBLATT: That would make  
25 headlines.

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1 THE COURT: I expected to lose a few.  
2 So they're very good.  
3 MR. ROSENBLATT: You were tough on them  
4 the first day after, you lost two of them.  
5 MS. ROSENBLATT: That was so  
6 surprising. And once it started, not a one.  
7 Nobody's been out for a few hours.  
8 THE COURT: Just brought it up.  
9 MS. ROSENBLATT: Your clerk has kept  
10 them all very happy. And your bailiff.  
11 (The trial was adjourned at 4:35 p.m.)  
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